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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

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.

No. 22STCV39662 (Consolidated with No.  
23STCV00352)

**PLAINTIFFS' NOTICE OF CROSS-  
MOTION AND CROSS-MOTION FOR  
JUDGMENT ON THE PLEADINGS;  
POINTS & AUTHORITIES IN  
SUPPORT THEREOF**

Reservation ID: 664308177955

Hearing Date: September 26, 2023

Time: 8:30 AM

Department: 72

Judge: None Assigned

Judge for All Purposes

Complaint Filed: Dec. 21, 2022

(January 6, 2023)

Answer Filed: February 10 & 15, 2023  
(February 21 & March 9,  
2023)

Trial Date: Not Set

NEWCASTLE COURTYARDS, LLC, a  
California limited liability company; JONATHAN  
BENABOU, as Trustee on behalf of THE MANI  
BENABOU FAMILY TRUST; and ROES 1  
through 500,

Plaintiffs and Petitioners,

v.

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CITY OF LOS ANGELES; COUNTY OF LOS ANGELES; COUNTY OF LOS ANGELES RECORDER'S OFFICE; DOES 1 through 500, and ALL PERSONS INTERESTED IN THE MATTER of the ULA and all proceedings related thereto,

Defendants and Respondents.

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**NOTICE OF MOTION & MOTION FOR JUDGMENT ON THE PLEADINGS**

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

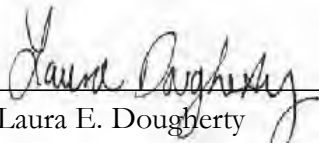
Per the order dated June 13, 2023, **PLEASE TAKE NOTICE THAT** on September 26, 2023, at 8:30 AM in Department 72 of the Los Angeles County Superior Court, located at Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012, Plaintiffs HOWARD JARVIS TAXPAYERS ASSOCIATION and APARTMENT ASSOCIATION OF GREATER LOS ANGELES will and hereby do move the Court for an order under Code of Civil Procedure § 438, granting judgment on the pleadings.

Plaintiffs HJTA, *et al.*, seek judgment on the grounds that the Complaint states facts sufficient to constitute a cause or causes of action against the defendant and the Answers do not state facts sufficient to constitute a defense to the Complaint. (Code Civ. Proc., § 438(c)(1)(A).)

This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support Thereof, and the Plaintiffs' Accompanying Request for Judicial Notice, and all matters and pleadings on file in this action, and any other matter that may be presented before or at the hearing on this motion.

DATED: June 23, 2023

JONATHAN M. COUPAL  
TIMOTHY A. BITTLE  
LAURA E. DOUGHERTY

Signed:   
\_\_\_\_\_  
Laura E. Dougherty  
Attorneys for Plaintiffs  
HOWARD JARVIS TAXPAYERS  
ASSOCIATION; APARTMENT  
ASSOCIATION OF GREATER LOS  
ANGELES

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1 **I. INTRODUCTION**

2 Measure ULA was an initiative ordinance that proposed a special transfer tax. But special  
3 transfer taxes are plainly unconstitutional under article XIII A, section 4 of the California  
4 Constitution (hereafter “section 4”). Further, the Los Angeles City Charter (Section 450) limits local  
5 initiative legislation to something the city council could itself adopt. The city council could not adopt  
6 Measure ULA. Therefore, initiative proponents are likewise unable.

7 Measure ULA was thus improperly sent to the voters. As often occurs in the exercise of  
8 caution favoring the people’s initiative power, it was sent to the voters with the question of its legality  
9 left outstanding. All interested parties knew that this court would need to consider it. Because  
10 Measure ULA is substantively illegal and such legislation may never be implemented, this court must  
11 void Measure ULA.

12 **II. APPLICABLE LEGAL STANDARD**

13 A plaintiff may move for judgment on the pleadings on the grounds that the complaint states  
14 facts sufficient to constitute causes of action against the defendants and the answer does not state  
15 facts sufficient to constitute a defense. (Code Civ. Proc., § 438(c)(1)(A).) Helpful here is that all  
16 relevant facts are matters of public record and judicially noticeable, which is appropriate for judgment  
17 on the pleadings. (Code Civ. Proc., § 438(d).)

18 Such a motion may be brought in a validation proceeding as well as a declaratory relief action.  
19 (*Jobs & Housing Coalition v. City of Oakland* (2021) 73 Cal.App.5th 505, 510 [In reverse validation action  
20 concerning initiative special tax, “[b]oth sides (the City and respondents) filed motions for judgment  
21 on the pleadings.”]; *Consol. Fire Prot. Dist. v. Howard Jarvis Taxpayers’ Ass’n* (1998) 63 Cal.App.4th 211,  
22 219; *Wilson v. Board of Retirement of Los Angeles County Employees Retirement Ass’n* (1957) 156 Cal.App.2d  
23 195.) This case presents both causes of action (validation and declaratory relief) and both provide the  
24 court the means to declare Measure ULA’s invalidity.

25 Such a motion may also be brought in consolidated validation actions regarding a single  
26 initiative measure, as here, even where there may be, also as here, multiple substantive arguments.  
27 (See RFJN, Exh. D, at 1, 2, 5 [In consolidated validation/reverse-validation actions regarding validity  
28 of an initiative tax ordinance, “Nothing in the statutory scheme preclude[d]” moving for judgment



1 on the pleadings, and “the Court [did] not rule on the substantive arguments raised by HJTA.”). In  
2 simpler terms, each and every cause of action presented in consolidated validation actions need not  
3 be resolved if judgment on the pleadings is appropriate as to any valid bas(es) argued to the court.

### 4 **III. RELEVANT FACTUAL ALLEGATIONS IN THE COMPLAINT**

5 The facts are public and indisputable<sup>1</sup>. Measure ULA was an initiative ordinance that  
6 proposed a transfer tax on real property. (Complaint, ¶¶ 1, 15, Exh. A; RFJN, Exh. A, at 1-2 [“On  
7 May 2, 2022, a group of proponents submitted an initiative petition to the City Clerk regarding  
8 funding for affordable housing and tenant assistance programs through a tax on real property  
9 transfers over \$5 million.”].) Measure ULA’s transfer tax is a special tax rather than a general tax  
10 because its proceeds are dedicated to a specific purpose – “affordable housing and tenant assistance  
11 programs.” (*Ibid.*; see also RFJN, Ex. A, at 3 [City Attorney summary referring to Measure ULA as  
12 “the special documentary transfer tax”]; see also Complaint, ¶ 18.) Measure ULA was placed on the  
13 November 8, 2022, ballot, and received 57% voter approval. The City Council declared it passed on  
14 December 7, 2022. (RFJN, Exh. C.)

### 15 **IV. ARGUMENT**

#### 16 **A. Measure ULA Is A Prohibited Special Transfer Tax Under Proposition 13.**

17 Article XIII A, section 4 prohibits special transfer taxes such as Measure ULA.

##### 18 **1. The Measure ULA Ordinance Is A Special Tax.**

19 There can be no dispute that Measure ULA is a special tax ordinance. (RFJN, Ex. A, at 3  
20 [City Attorney referring to “the special documentary transfer tax”]; Complaint, ¶¶ 1, 15, 17-18.)  
21 Article XIII A, section 4 refers to “special taxes” when it prohibits them in the form of transfer  
22 taxes. As to that exact reference in section 4, the Supreme Court has said “we construe the term  
23 ‘special taxes’ in section 4 to mean taxes which are levied for a specific purpose.” (*City and County of*  
24 *San Francisco v. Farrell* (1982) 32 Cal.3d 47, 57.)

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25  
26 <sup>1</sup> While the City of Los Angeles oddly filed a general denial to the verified complaint rather than a  
27 line-by-line answer, all relevant and necessary facts are of public knowledge, of public record, and are  
28 judicially noticeable. Additionally, the answer of Southern California Association of Non-Profit  
Housing, Inc., et al., admits that the text of Measure ULA as attached to the complaint as Exhibit A  
thereto is accurate. (SCANPH Answer at ¶ 15.)

1 The Measure ULA ordinance’s specific purpose is housing. This is clear in the text of the  
2 ordinance which says, using the key words “all” and “exclusively,”: “There is hereby created and  
3 established within the Treasury of the City of Los Angeles a special trust fund to be known as the  
4 House LA Fund for the deposit and use of all taxes collected pursuant to Subsection (b) of Section  
5 21.9.2 of the Los Angeles Municipal Code. Money in the House LA Fund shall be used exclusively  
6 according to the program set forth in Article 9 of Chapter 24 of Division 22 of the Los Angeles  
7 Administrative Code (the Los Angeles Program to Prevent Homelessness and Fund Affordable  
8 Housing (‘House LA Program’)).” (Complaint, ¶ 18, citing Section 3 of the Measure ULA Ordinance,  
9 adding Chapter 192 to Division 5 of the Los Angeles Administrative Code, as section 5.598.1 “House  
10 LA Fund.”; RFJN, Exh. B, at 7.)

11 In the referenced section, the special tax is accordingly named the “Homelessness and  
12 Housing Solutions Tax.” (Complaint, Exh. A, Section 2, adding subsection (b) to Section 21.9.2 of  
13 the Los Angeles Municipal Code; RFJN, Exh. B, at 4.) It is crystal clear that the tax is special. The  
14 City Council would have no discretion for any general funding purposes.

## 15 **2. The Measure ULA Ordinance Is A Transfer Tax.**

16 There can be no dispute that Measure ULA is a transfer tax ordinance. The new subsection  
17 (b) to Section 21.9.2 of the Los Angeles Municipal Code would impose a tax on the transfer or sale  
18 of any interest in real property above a specified dollar amount. The rates are 4% of the  
19 consideration or value of a property more than \$5,000,000 and less than \$10,000,000, and 5.5% of  
20 the consideration or value of a property more than \$10,000,000. (Complaint, Exh. A, Section 2,  
21 adding subsection (b) to Section 21.9.2 of the Los Angeles Municipal Code. See also RFJN, Exh. A,  
22 at 1-3 [City Attorney describing Measure ULA as “a tax on real property transfers over \$5 million”  
23 and referring to “the special documentary transfer tax”].) As described in article XIII A, section 4,  
24 Measure ULA is thus a “transaction tax or sales tax on the sale of real property within” the City of  
25 Los Angeles. (See also Gov. Code, § 53725 [“No local government or district may impose any  
26 transaction tax or sales tax on the sale of real property within the city, county or district.”].)

27 / / /

28 / / /

1           **B.     The Los Angeles City Council Is Constitutionally Prohibited From Imposing**  
2           **A Special Transfer Tax.**

3           The established law is that article XIII A, section 4 and Government Code section 53725  
4 prohibit transfer taxes, with the exception that charter cities may have *general* transfer taxes. Per  
5 section 4, no local government may impose any special transfer taxes. Indeed, none have attempted  
6 to do so, until Measure ULA.

7           In *Cohn v. City of Oakland* (1990) 223 Cal.App.3d 261, the plaintiff sought declaratory relief  
8 and a refund of a transfer tax. In a brief opinion, the Court found that Article XIII A, section 4  
9 clearly applies to prohibit special transfer taxes, but not necessarily general transfer taxes.

10          Two 1993 cases then settled the rule that only charter cities may have general transfer taxes.  
11 (*Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137; *Fisher v. County of Alameda* (1993) 20  
12 Cal.App.4th 120.) Accordingly, proposals will occasionally arise in general law cities concurrently  
13 proposing to adopt a charter and a general transfer tax. (See RFJN, Exh. E, at 3 [Measure V, City of  
14 El Cerrito ballot question]; RFJN, Exh. F, El Cerrito Measure V, November 6, 2018,  
15 <https://www.contracostavote.gov/wp-content/uploads/Measure-Wording-List-00000003.pdf>;  
16 [Exhibit-B-from-Resolution-2018-46 \(el-cerrito.org\)](https://www.contracostavote.gov/wp-content/uploads/Measure-Wording-List-00000003.pdf) [“WHEREAS, to address these issues, in  
17 November 2017, the City Council created and provided direction to a volunteer Charter Committee  
18 to prepare a draft charter for the City Council to consider submitting to the voters of El Cerrito to  
19 change El Cerrito to a charter city, *which would also empower the voters to approve a real property transfer tax;*”]  
20 emphasis added; RFJN, Exh. G, City of Belvedere Measure D, November 8, 2022,  
21 <https://drive.google.com/file/d/1kk4dy7g47UnINU7C62DX7S9I6Ce2XJyG/view> [“Under state  
22 law, the proposed real estate transfer tax can only be levied by a charter city with the approval of a  
23 majority of the voters.”]; RFJN, Exh. H, San Bruno consideration of charter/tax measure:  
24 <https://www.sanbruno.ca.gov/877/Commercial-Property-Transfer-Tax-and-Cha> [“General law  
25 cities cannot enact a Commercial Property Transfer Tax.”].)

26          Charter cities are permitted to have general transfer taxes because of home rule and because  
27 Government Code section 53725 is only a statute, not a constitutional provision like section 4. As a  
28 result, it is “in the case of charter cities” that general transfer taxes become the only form of

1 acceptable transfer taxes. (*Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th at 146.) *Fielder* adopted  
2 *Cohn's* holding that article XIII A, section 4 prohibits all “transfer taxes which are special taxes.” (*Id.*  
3 at 142.) This is why the City Council could never adopt Measure ULA.

4 *Fielder* went deeper than *Cohn* because it had opportunity to analyze the added effect of  
5 Government Code section 53725, the taxpayer protection initiative known popularly as Proposition  
6 62. Voters passed Section 53725 in 1986 to enhance Article XIII A, section 4’s prohibition of  
7 transfer taxes. It added the word “any” and removed the word “special” in an effort to stop all  
8 transfer taxes. It provides: “No local government or district may impose any transaction tax or sales  
9 tax on the sale of real property within the city, county or district.” As a statute, however, rather than  
10 a constitutional provision, courts have applied it only to general law cities. Hence, *Fielder* found that  
11 “[s]ince charter cities such as defendant have sovereign power over municipal affairs (Cal. Const., art.  
12 XI, § 5), subdivision (a) of Government Code section 53725 does not necessarily restrict the power  
13 of a charter city to impose a transaction tax such as that enacted by ordinance No. 166976 [a general  
14 transfer tax].” (14 Cal.App.4th at 143.)

15 *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120 follows and confirms *Fielder*. There, a  
16 plaintiff sought a refund of a general transfer tax from the City of Berkeley on the same grounds:  
17 Article XIII A, section 4, and Government Code section 53725. The court found that Berkeley’s  
18 transfer tax was general, and therefore allowable because Berkeley is a charter city. It left completely  
19 undisturbed the holding that article XIII A, section 4 bans special transfer taxes as to all cities  
20 including Los Angeles here.

21 In sum, the charter city of Los Angeles is not subject to section 53725’s ban on all transfer  
22 taxes, but is subject to article XIII A, section 4’s ban on special transfer taxes. It is only “when the  
23 transfer tax is a general, rather than a specific, tax” that a charter city may have one. (*Fielder*, 14  
24 Cal.App.4th at 142.) Los Angeles, even as a charter city, simply may not have a special transfer tax,  
25 which clearly voids Measure ULA.

26 There has been no change to the constitutional ban of special transfer taxes. Thus, Measure  
27 ULA is substantively invalid under Proposition 13 at article XIII A, section 4.

28 / / /

1           **C.     Because The Los Angeles City Council Is Prohibited From Adopting A Special**  
2                         **Transfer Tax, Charter Section 450 Prohibits An Initiative From Adopting A**  
3                         **Special Transfer Tax.**

4           Given the above, no one would dispute that the Los Angeles City Council could not have  
5 proposed Measure ULA and declared it passed even upon voter approval. And indeed, no governing  
6 body in California is known to have placed any such measure on the ballot because article XIII A,  
7 section 4 is so plain in its prohibition.

8           This case arises because it must have been believed that an initiative could legislate on a  
9 matter prohibited by article XIII A, section 4. There is recent case law (starting with a case of  
10 contentious interpretation, *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924  
11 (“*Upland*”)) that has allowed initiatives to avoid certain matters deemed *procedural*<sup>2</sup> under Proposition  
12 13 and its progeny. **But there is no procedural issue here. At issue is the *substance* of Measure**  
13 **ULA. That substance may not exist.**

14           Measure ULA is substantively invalid under Charter section 450 because it was not legislation  
15 that the City Council could adopt. Like the standard language in many other charters, section 450  
16 codifies that voter-initiated local ordinances cannot exceed the boundaries of what the city council is  
17 legally able to enact.

18           Section 450 of the Los Angeles City Charter is entitled “Subject of Initiative.” It declares:

19           Any proposed ordinance ***which the Council itself might adopt*** may be submitted  
20 to the Council by a petition filed with the City Clerk, requesting that the ordinance be  
21 adopted by the Council or be submitted to a vote of the electors of the City. (RFJN,  
22 Exh. I, emphasis added.)

23 City charters employ this limitation for a couple of reasons. First, it keeps the city council in check.

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24  
25 <sup>2</sup> It is expected that the City and/or other interested parties favoring Measure ULA will argue the  
26 following cases, all declining to apply procedural limitations to the initiative power: *California Cannabis*  
27 *Coalition v. City of Upland* (2017) 3 Cal.5th 924; *City and County of San Francisco v. All Persons Interested in*  
28 *Matter of Proposition C* (2020) 51 Cal.App.5th 703; *Howard Jarvis Taxpayers Assn. v. City and County of San*  
*Francisco* (2021) 60 Cal.App.5th 227; See also RFJN, Exh. A, p. 7, n. 1 [June 13, 2022, City Attorney  
letter citing the latter two cases in support of a conclusion that simple majority was the voter  
approval threshold for Measure ULA].

1 When an initiative petition signed by only 10% of the city’s voters is presented to the city council, the  
2 Elections Code gives the council two options. It may: (1) “[a]dopt the ordinance, without alteration,”  
3 or (2) “[s]ubmit the ordinance, without alteration, to the voters.” (Elec. Code § 9215.) If the city  
4 council takes option #1, it can enact into law without an election a proposal for which only 10% of  
5 the voters have shown support. It is easy to imagine a city council itself rounding up enough  
6 signatures on a petition to propose, in the form of an initiative, an ordinance that would be unlawful  
7 for the city council to pass on its own. Then, when the petition is presented, all it need do is “[a]dopt  
8 the ordinance, without alteration,” and voila! An ordinance becomes law that was supposed to be  
9 beyond the city council’s power.

10 Another reason city charters match the electorate’s power to the power of their elected  
11 officials is to protect the charter itself as the city’s governing document. In other words, the city  
12 council cannot enact an ordinance in conflict with the city charter, and nor can the voters – not  
13 without going through the proper steps to amend the charter itself. That hasn’t been attempted here.

14 Thus, the substantive scope of the initiative power in Los Angeles is “any proposed  
15 ordinance which the Council itself might adopt.” The Council cannot adopt the Measure ULA  
16 ordinance because it is clearly illegal under article XIII A, section 4. An initiative has no greater  
17 ability.

18 Initiatives are not beyond substantive challenge, particularly on constitutional questions. As  
19 an example in a context outside of taxation, an initiative would be void if it advanced or inhibited  
20 religion per article I, section 4 or financially supported religion per article XVI, section 5. (See *Paulson*  
21 *v. Abdelnour* (2006) 145 Cal.App.4th 400, 426 [where city council could not legislate to preserve a  
22 cross for religious purposes, the “question [became] whether the language of [an] initiative measure  
23 [was] sufficiently clear to compel the inference that the voters intended the cross be transferred [to  
24 the federal government] for an illegal purpose, that is, in order to preserve it as a religious symbol or  
25 for a religious purpose”].) In *Paulson*, an initiative ordinance transferring a memorial with a cross to  
26 federal ownership, carefully examined, was not for religious purposes and therefore did not violate  
27 the Constitution or the city’s charter. Important here is that the court did not validate the initiative  
28 *because it was an initiative* as the Measure ULA supporters here may desire and argue, but because it did

1 not violate state law or the city’s charter. Here, however, Measure ULA plainly violates both the  
2 Constitution and the Los Angeles City Charter because they prohibit special transfer taxes.

3 A charter’s substantive limit on voter-initiated legislation is normal. (See *Howard Jarvis*  
4 *Taxpayers Assn. v. City and County of San Francisco* (2021) 60 Cal.App.5th 227, 237 [“the charter imposes  
5 a substantive limit on the initiative power.”]; *City & County of San Francisco v. Patterson* (1988) 202  
6 Cal.App.3d 95, 100-101 [“Under the relevant provisions of section 9.108 of the San Francisco City  
7 Charter, “The registered voters shall have power to propose by petition, and to adopt or reject at the  
8 polls, any ordinance, act or other measure which is within the power conferred upon the board of  
9 supervisors to enact . . . .’ Accordingly, the initiative power of the people is no broader in scope than  
10 the power of the board of supervisors.”]; *Safe Life Caregivers v. City of Los Angeles* (2016) 243  
11 Cal.App.4th 1029 [Los Angeles Charter sections 450 and 460 impose substantive limit on voter-  
12 initiated legislation].)

13 Section 450 has been part of the Los Angeles Charter since 1911. (RFJN, Exh. L, at 2073-  
14 2074; Sen. Conc. Res No. 19, Stats. 1911 res. ch. 55, at 2073-2074.) Other cities had been adopting  
15 identical language from roughly 1905-1911, including Santa Cruz, Alameda City, Santa Barbara, and  
16 Alhambra. It is simply common language. (See RFJN, Exh. K, at 1044 [Santa Monica charter in 1907  
17 employing phrase “being a measure that the City Council might itself adopt”]; Assem. Conc. Res No.  
18 5, Stats. 1907 res. ch. 6, at 1044.). Los Angeles voters affirmed this substantive limitation when they  
19 amended the charter in 1925. (RFJN, Exh. M, at 1108-1109; Sen. Conc. Res. No. 2, Stats. 1925 res.  
20 ch. 5, at 1108-1109.) They did the same in 1999. (RFJN, Exh. N, at 68; Stats. 1999 appen., charter ch.  
21 5, at 68.)

22 Before 1911, the Los Angeles City Charter did not have the substantive limitation. It simply  
23 read: “Any proposed ordinance may be submitted to the council by a petition...” (RFJN, Exh. J, at  
24 572; Sen. Conc. Res. No. 4, Stats. 1903 res. ch. 6, at 572.) The 1911 change must be presumed  
25 intentional. “The very fact that the prior act is amended demonstrates the intent to change the pre-  
26 existing law, and the presumption must be that it was intended to change the [law] in all the  
27 particulars touching which we find a material change in the language of the act.” (*City of Irvine v. So.*  
28 *Cal. Assn. of Gov'ts* (2009) 175 Cal.App.4th 506, 522 [quoting *Loew’s, Inc. v. Byram* (1938) 11 Cal.2d

1 746, 750].) By charter amendment, then, Los Angeles voters decided that initiative legislation must be  
2 something “the Council itself might adopt.” This has remained unchanged for over 110 years. The  
3 charter being the constitution of a city, section 450 may not be ignored.

4 The City Attorney here referenced charter sections neighboring Section 450, explaining the  
5 requirements of sections 451 and 452 when discussing Measure ULA, but ignored section 450 even  
6 though it is the foremost section of the chapter titled “Initiative.” (RFJN, Exh. A, at 2, 6.) The City is  
7 governed by the charter and cannot selectively obey or enforce one neighboring section without the  
8 other.

9 Because section 450 has been so stable, there is only one case interpreting it. In *Safe Life*  
10 *Caregivers*, 243 Cal.App.4th 1029, medical marijuana providers challenged Proposition D for, among  
11 other things, creating space only for pre-existing or specially favored dispensaries.

12 During the litigation, an issue came up regarding the referendum power and Los Angeles  
13 Charter Section 460 which has parallel language to section 450. (*Safe Life Caregivers*, 243 Cal.App.4th  
14 at 1046 [“Section 450 is identical to charter section 460’s referendum requirement except it applies to  
15 initiatives.”]) The marijuana providers argued that, since the City Council could not amend the City’s  
16 zoning ordinance without the proposed amendment first going through a Planning Commission  
17 review, and since the Measure D referendum had not gone through a Planning Commission review,  
18 Measure D was void under Charter section 460 which authorized the referendum of “any proposed  
19 ordinance ... *that the Council itself might adopt.*”

20 The court disagreed. Finding that review by the Planning Commission was a procedural  
21 requirement, not a substantive limitation, the court held, “Section 460 is concerned with the subject  
22 matter of referenda; the emphasized language means only that the City Council cannot submit to the  
23 voters any proposed ordinance which it is not within the lawful jurisdiction of the council to enact. ...  
24 Were appellants’ interpretation of the italicized language correct, it would mean that before an  
25 initiative petition could be submitted to the City Council, its proponents would have to satisfy all of  
26 the necessary procedural requirements for enactment of an ordinance by the council – an absurd  
27 conclusion.” (*Safe Life Caregivers*, 243 Cal.App.4th at 1046.)

28 Section 450, properly interpreted, is applicable here to Measure ULA: “It is apparent that



1 ‘which the Council itself might adopt,’ as used in both charter sections 450 and 460 is simply a limit  
2 on substantive subject matter and not an incorporation of procedural requirements imposed on the  
3 council before the council may enact an ordinance.” (243 Cal.App.4th at 1046.) Measure ULA  
4 exceeds the substantive subject matter limit established by Section 450 because it is a type of tax that  
5 is unlawful for the City Council to adopt. It must be declared void.

6 *Howard Jarvis Taxpayers Assn. v. City and County of San Francisco* affirms. In that case, the San  
7 Francisco Charter had a similar substantive limit on the initiative power<sup>3</sup>. HJTA had argued that if the  
8 Board of Supervisors there could not adopt a special tax on less than two-thirds voter approval,  
9 neither could initiative proponents (who happened to be government officials). But, by classifying the  
10 voter approval threshold as a *procedure*, the Court of Appeal clarified, “the charter imposes a  
11 substantive limit on the initiative power; it does not import into the initiative process any procedural  
12 limitation on board action.” (60 Cal.App.5th at 237.) The substantive limit imposed by Los Angeles  
13 City Charter Section 450 is clear. The City Council could not have adopted Measure ULA because  
14 our state constitution prohibits any city, including a charter city, from imposing a *special* transfer tax.  
15 Under Charter Section 450, that substantive limitation applies to the city’s initiatives as well.

16 **D. Where Legislation Is Beyond The Power Of The People, It Is Void.**

17 It is not uncommon for courts to invalidate initiative ordinances, some of which have  
18 nevertheless garnered high percentages of voter approval. If the ordinance is substantively invalid or  
19 otherwise outside of the electorate’s power, it is void.

20 Examples abound. In *City & County of San Francisco v. Patterson*, 202 Cal.App.3d at 104, an  
21 initiative was void because it would have taken a charter amendment to accomplish the desired result.  
22 In *Citizens for Jobs & the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, the court found an  
23 initiative invalid for three reasons, including substantive unconstitutionality: “It interferes with the  
24 essential government functions of fiscal planning and land use planning; it impermissibly interferes  
25

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26 <sup>3</sup> This language was in San Francisco Charter section 14.100, stating that voters could pass an  
27 initiative measure if “within the powers conferred upon the Board of Supervisors to enact.” (60  
28 Cal.App.5th at 236; see also *City and County of San Francisco v. All Persons Interested in Matter of Proposition*  
*C*, 51 Cal.App.5th at 724 [“This means ‘the electorate has no greater power to legislate than the board  
itself possesses.’”], citing *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 104.)

1 with administrative or executive acts; and it is unconstitutionally vague in its provisions, such that the  
2 County and its Board may reasonably be heard to complain that they would not be able to comply  
3 with it because of its alleged vagueness.” (*Id.* at 1324-1325.) In *Gates v. Blakemore* (2019) 39  
4 Cal.App.5th 32, six initiatives were stricken for interference with constitutional provisions and  
5 statutes in the Government Code. Most recently, with the City of Oxnard as the plaintiff, the Court  
6 of Appeal struck an overwhelmingly popular initiative ordinance, Measure N, a tax repeal measure,  
7 characterizing it as administrative rather than legislative. (*City of Oxnard v. Starr* (2023) 87 Cal.App.5th  
8 731.)

9           Regardless of “the long-standing judicial policy of liberally construing the initiative power  
10 whenever it is challenged,” (*id.* at 744), and with all due respect to the initiative power as something  
11 quite dear to HJTA itself, more cases are repeatedly making it clear that initiatives are sometimes  
12 invalid. Measure ULA is one such initiative. It is void for plain and unquestioned substantive  
13 unconstitutionality under the state constitution and under the City’s own charter.

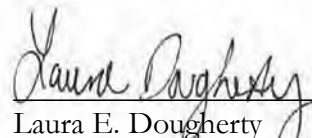
14 **V.     CONCLUSION**

15           For the foregoing reasons, Measure ULA must be declared substantively invalid. Judgment  
16 on the pleadings should be entered accordingly.

17  
18 Dated: June 23, 2023

Respectfully submitted,

JONATHAN M. COUPAL  
TIMOTHY A. BITTLE  
LAURA E. DOUGHERTY



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Attorneys for Plaintiffs  
HOWARD JARVIS TAXPAYERS  
ASSOCIATION; APARTMENT  
ASSOCIATION OF GREATER LOS  
ANGELES

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**PROOF OF SERVICE**

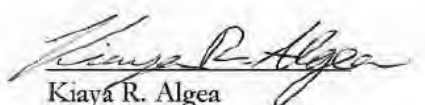
I, Kiaya Algea, declare:

I am employed in the County of Sacramento, California. I am over the age of 18 years, and not a party to the within action. My business address is: 1201 K Street, Suite 1030, Sacramento, California 95814. My electronic service address is: kiaya@hjta.org. On June 23, 2023, I served **PLAINTIFFS' NOTICE OF CROSS-MOTION AND CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS; POINTS & AUTHORITIES IN SUPPORT THEREOF** on the interested parties below, using the following means:

**SEE ATTACHED SERVICE LIST**

  X   **BY ELECTRONIC MAIL** On the date listed above, I electronically transmitted the document(s) in a PDF format to the persons listed below with their prior approval to their respective electronic mailbox addresses.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 23, 2023, at Sacramento, California.



Kiaya R. Algea

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**SERVICE LIST**

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<p>Gregory Bonett Faizah Malik Kathryn Eidmann PUBLIC COUNSEL 610 S. Ardmore Avenue Los Angeles, California 90005 Tel.: (213) 385-2977 Fax: (213) 385-9089 E: gbonett@publiccounsel.org fmalik@publiccounsel.org keidmann@publiccounsel.org</p> <p><i>Attorneys for Defendants as Persons Interested in the Matter: Southern California Association of Non- Profit Housing, Inc.; Korean Immigrant Workers Advocates of Southern California DBA Koreatown Immigrant Workers Alliance; Service Employees International Union Local 2015</i></p>	<p>Morgan Chu Nicole Miller Emily Grant Jared Looper Michael Gniwisch IRELL &amp; MANELLA, LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, CA 90067 Tel.: (310) 203-7000 E: MeasureULA@irell.com</p> <p><i>Attorneys for Defendants as Persons Interested in the Matter: Southern California Association of Non- Profit Housing, Inc.; Korean Immigrant Workers Advocates of Southern California DBA Koreatown Immigrant Workers Alliance; Service Employees International Union Local 2015</i></p>
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## Court Reservation Receipt

Reservation	
Reservation ID: 664308177955	Status: RESERVED
Reservation Type: Motion for Judgment on the Pleadings	Number of Motions: 1
Case Number: 22STCV39662	Case Title: HOWARD JARVIS TAXPAYERS ASSOCIATION, et al. vs CITY OF LOS ANGELES, et al.
Filing Party: Howard Jarvis Taxpayers Association (Plaintiff)	Location: Stanley Mosk Courthouse - Department 72
Date/Time: June 8th 2023, 8:30AM	Confirmation Code: CR-JUBR56ZBTNAFTM8EQ

Fees			
Description	Fee	Qty	Amount
Motion for Judgment on the Pleadings	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
<b>TOTAL</b>			<b>\$61.65</b>

Payment	
Amount: \$61.65	Type: Visa
Account Number: XXXX2971	Authorization: 06554D
Payment Date: 2023-01-26	

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Filing Party: Howard Jarvis Taxpayers Association (Plaintiff)	Location: Stanley Mosk Courthouse - Department 72
Date/Time: August 29th 2023, 8:30AM	Confirmation Code: CR-PTHDENPGKWBUBAAHB

### Fees

Description	Fee	Qty	Amount
Reschedule Fee	20.00	1	20.00
Credit Card Percentage Fee (2.75%)	0.55	1	0.55
<b>TOTAL</b>			<b>\$20.55</b>

### Payment

Amount: \$20.55	Type: Visa
Account Number: XXXX3796	Authorization: 32924D
Payment Date: 2023-06-02	

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