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15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF LOS ANGELES

18 COMMUNITY POWER COLLECTIVE, EAST
LOS ANGELES COMMUNITY CORPORATION,
19 INCLUSIVE ACTION FOR THE CITY, MERLIN
ALVARADO, and RUTH MONROY,

20 Petitioners and Plaintiffs,

21 v.

22 CITY OF LOS ANGELES, LOS ANGELES CITY
23 COUNCIL, BUREAU OF STREET SERVICES; and
DOES 1-25,

24 Respondents and Defendants.
25
26
27
28

Case No. 22STCP04289
Assigned to Hon. Judge James C. Chalfant

**PETITIONERS' OPPOSITION TO
RESPONDENTS' DEMURRER**

*[Filed Concurrently with Petitioners'
Objections and Opposition to Respondents'
Request for Judicial Notice in Support of
Demurrer]*

Date: March 16, 2023
Time: 9:30 a.m.
Dept.: 85

Action Filed: 12/07/2022
TSC: 03/16/2023
Demurrer: 03/16/2023

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1 **Preliminary Statement**

2 In their Demurrer, Respondents City of Los Angeles (“City”), Los Angeles City Council
3 (“Council”) and Bureau of Street Services (“StreetsLA”) address only Petitioners’ writ of mandate
4 cause of action – ignoring their causes of action for injunctive and declaratory relief – and rest their
5 demurrer entirely upon a single, deeply flawed assertion: that notwithstanding the State of
6 California’s enactment of Senate Bill No. 946 (“SB-946”), the City, in its sidewalk vending
7 Ordinance adopted in December 2018 (the “Ordinance”), retains broad, open-ended discretion to
8 impose and enforce as it sees fit “no-vending” zones excluding sidewalk vendors from operating
9 within a 500 foot buffer zone around many of Los Angeles’ most vibrant retail venues. This
10 contention turns legal reality on its head.

11 In SB-946, the State of California exercised its legislative authority to address how local
12 communities across the State, including “charter cit[ies]” such as the City of Los Angeles, regulate
13 the operations of sidewalk vendors by adopting mandatory state-wide standards that prescribe
14 “objective” constraints on the manner in which local governments may address sidewalk vending in
15 a variety of important respects. Gov’t Code § 51037(a) (“A local authority shall not regulate
16 sidewalk vendors except in accordance with Sections 51038 and 51039”); Stats. 2018, c. 459 (S.B.
17 946), § 1(e) (“This act applies to any city, [and] county . . . including a charter city”). Among the
18 areas addressed by SB-946 that are of principal importance here are local government requirements
19 in the following three areas: (a) limiting “sidewalk vendors to operate only in a designated
20 neighborhood or area,” (b) requiring such vendors to operate only “within specific parts of the public
21 right-of-way,” and (c) otherwise “regulating the time, place and manner” in which vending is carried
22 out. Gov’t Code § 51038 (b)(1), (b)(4)(A), (c).

23 Under SB-946’s state-wide standards, a local government is not permitted to place
24 restrictions on sidewalk vendors in the areas described above unless it demonstrates that these
25 restrictions are necessary to address “objective health, safety, or welfare concerns” that are “directly
26 related” to the sidewalk vending conduct at issue. SB-946 thereby requires local governments to
27 refrain from erecting “unnecessary barriers” preventing sidewalk vendors from “accessing the
28

1 formal economy,” thereby “harming California’s economy” and “disrupting the regulation” of this
2 significant component of California’s business community. Stats. 2018, c. 459 (S.B. 946),
3 § 1(a)(6).

4 Respondents seek to defend the challenged portions of the City’s Ordinance by claiming
5 the unilateral right to interpret for themselves SB-946’s statutory “objective health, safety, or
6 welfare concerns” standard, arguing for example, that this “exception language . . . presupposes
7 that the local authority exercises its discretion in determining whether the risk justifies limiting the
8 location of sidewalk vending.” Mem. 4; *see id.* at 1 (asserting that “the statute inherently requires
9 an exercise of discretion” by the City). Proceeding from this leap of faith, Respondents insist that
10 the law requires no other showing of “objective” harm “directly related” to the vending conduct
11 before they are entitled to outlaw sidewalk vending in the challenged areas.

12 Respondents’ position, if accepted, would render SB-946 a nullity. To demonstrate the
13 error in Respondents’ contentions, Petitioners address in detail how SB-946 must properly be
14 interpreted. To do so, Petitioners review SB-946’s express statutory provisions that invalidate the
15 overreaching “no-vending” zones and accompanying arbitrary 500 foot exclusion areas around
16 many of the City’s most important retail venues, together with the other challenged restrictions,
17 and set forth the governing legal canons of statutory construction ignored by Respondents in their
18 Demurrer. Petitioners also review the key elements of SB-946’s mandatory “objective health,
19 safety, or welfare concerns” standard, and demonstrate how that standard must be applied to the
20 challenged provisions of the City’s Ordinance. Finally, Petitioners show that, when adopting and
21 then implementing the City’s Ordinance, Respondents in fact made no meaningful effort to apply
22 SB-946’s “objective health, safety, or welfare concern” standard to either the sweeping “no
23 vending” zones or the other vending restrictions challenged here. Instead, Respondents initially
24 developed and approved these provisions prior to the Legislative’s adoption of SB-946 and, once
25 SB-946 was in place, retained these provisions in the final Ordinance without obtaining or
26 considering findings or justifications for them that could possibly satisfy SB-946’s requirements.

1 Argument

2 **I. EACH OF RESPONDENTS’ ARGUMENTS CHALLENGING PETITIONERS’**
3 **LAWSUIT FAIL AS A MATTER OF LAW.**

4 In considering a demurrer, California courts must “accept as true the well-pleaded
5 allegations” in a plaintiff’s complaint, and “give the complaint a reasonable interpretation, reading
6 it as a whole and its parts in their context.” *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006); *see*
7 *Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985). “A demurrer tests only the legal sufficiency of the
8 pleading.” *Comm. On Children's Television, Inc. v. Gen. Foods Corp.*, 35 Cal. 3d 197, 213–14
9 (1983). “It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations
10 or the accuracy with which he describes the defendant's conduct.” *Id.*

11 **A. In SB-946, The State of California Established Mandatory And Non-**
12 **Discretionary State-wide Statutory Standards That Override The City’s**
Discretion In Regulating Sidewalk Vending.

13 In their Demurrer, Respondents assert that “the City has the discretion to determine
14 whether to implement a no-vending zone” at a particular location and “to what extent,” arguing
15 that the “plain language” of SB-946 “presupposes that the local authority” is entitled to “exercise[]
16 its discretion” in implementing such restrictions. Mem. 2, 4. However, while acknowledging that
17 construing the meaning of SB-946’s provisions is “a question of statutory interpretation” (Mem.
18 3), Respondents nowhere make any attempt to identify or apply the ordinary legal canons for
19 discerning a statute’s meaning.

20 **1. Applying California’s rules of statutory construction to SB-946.**

21 In construing a statute, California courts apply the “fundamental rule” that

22 a court should ascertain the intent of the Legislature so as to effectuate the
23 purpose of the law. In determining such intent, the court turns first to the
24 words themselves for the answer. We are required to give effect to statutes
according to the usual, ordinary import of the language employed in framing
them.

25 *Rodriguez v. Solis*, 1 Cal. App. 4th 495, 504-505 (1991); *e.g.*, *1300 N. Curson Invs., LLC v.*
26 *Drumea*, 225 Cal. App. 4th 325, 332 (2014). In addition, when determining whether a duty
27 imposed on a public agency by a particular statute is a “ministerial” one, courts apply the
28 following additional rule:

1 Where a statute or ordinance clearly defines the specific duties or course of
2 conduct that a governing body must take, that course of conduct becomes
3 mandatory and eliminates any element of discretion.

4 *Id.*; accord *Ellena v. Dept. of Ins.*, 230 Cal. App. 4th 198, 205 (2014) (applying this rule when
5 “[t]he clear language of th[e] statute is ‘[t]hat the commissioner *shall not approve* any disability
6 policy for insurance or delivery . . .’ unless it meets a number of requirements”) (emphasis in
7 original). Underlying this precept is the definition of a “ministerial duty” set forth in *Lockyer v.*
8 *City and Cnty. of San Francisco*: “an act that a public officer is required to perform in a prescribed
9 manner in obedience to the mandate of legal authority and without regard to his own judgment or
10 opinion concerning such act’s propriety or impropriety, when a given state of facts exists.”
11 *Lockyer*, 33 Cal. 4th 1055, 1082 (2004) (quoting *Kavanaugh v. West Sonoma Cnty. Union High*
12 *Sch. Dist.*, 29 Cal. 4th 911, 916 (2003)). Respondents quote this definition in their Demurrer,
13 Mem. at 4, but ignore its application.

14 Applying the foregoing principles, the pertinent language of SB-946 leaves no room for
15 doubt that the City must satisfy the following mandatory standards when implementing and
16 enforcing its Ordinance regulating sidewalk vending:

17 § 51037(a): “A local authority **shall not** regulate sidewalk vendors except **in accordance**
18 **with Sections 51038 and 51039.**”

19 § 51038(b): “A local authority’s sidewalk vending program **shall comply with all of the**
20 **following standards:**”

21 a. § 51038(b)(1): “A local authority **shall not** require a sidewalk vendor to
22 operate within specific parts of the public right-of-way, **except when** that
23 restriction is **directly related to objective health, safety, or welfare**
24 **concerns.**”

25 b. § 51038(b)(4)(A): “A local authority **shall not** restrict sidewalk vendors to
26 operate only in a designated neighborhood or area, **except when** that
27 restriction is **directly related to objective health, safety, or welfare**
28 **concerns.**”

- 1 c. § 51038(c): “A local authority may, by ordinance or resolution, adopt
2 additional requirements regulating the time, place, and manner of sidewalk
3 vending **if the requirements are directly related to objective health,**
4 **safety, or welfare concerns”**
- 5 d. § 51038(d)(1)&(2): Allows a local authority to limit vendors from operating
6 nearby a “permitted certified farmers’ market,” “permitted swap meet,” or
7 “an area designated for a temporary special permit” but **only (1) in the**
8 **“immediate vicinity” of such events and (2) only for the “limited**
9 **operating hours” or “limited duration” of the event.**

10 Of central importance to Petitioners’ lawsuit is SB-946’s statutory “objective health,
11 safety, or welfare concerns” standard, which appears repeatedly in the provisions quoted above.
12 This standard easily fits the legal definition of a “ministerial duty” quoted above – namely, the
13 duty of a public officer “to perform [an act] in a prescribed manner in obedience to the mandate of
14 legal authority.” *Lockyer*, 33 Cal. 4th at 1082 (2004). It consists of three principal components.

15 First, this standard requires that any “health, safety, or welfare” concern cited to support a
16 local authority’s sidewalk vending restriction must be “objective” in nature – a term denoting a
17 concern that is demonstrably “real,” “actual,” or “known,” and not based on opinions or subjective
18 judgments. *E.g.*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1555-56 (1981)
19 (Objective: “observable or verifiable, especially by scientific methods...involving the use of facts
20 without distortion by personal feelings or prejudices.”); AMERICAN HERITAGE COLLEGE
21 DICTIONARY 958 (4th ed. 2004) (Objective: “[h]aving actual existence or reality...[u]ninfluenced
22 by emotions or personal prejudices.”); *see Ruegg & Ellsworth v. City of Berkeley*, 63 Cal. App.
23 5th 277, 292, 300-01 (2021) (“‘Objective’ means ‘[o]f, relating to, or based on externally
24 verifiable phenomena, as opposed to an individual’s perceptions, feelings, or intentions’ (Black’s
25 Law Dictionary (11th ed. 2021)), “based only on facts and not influenced by personal feelings or
26 beliefs’ (Macmillan Dict. Online (2021) [citation omitted]).”).

27 In *Ruegg*, for example, the Court of Appeal construed Government Code § 65913.4, which
28 contains statutory “objective zoning standards” and “objective design review standards” governing

1 the approval of affordable housing projects, as establishing a “streamlined, *ministerial* approval
2 process” fashioned to expedite local governments’ approval of such projects. 63 Cal. App. 5th at
3 297–300 (emphasis in original). In that statute, these “objective” standards are further defined as
4 “involv[ing] no personal or subjective judgment by a public official” and as “uniformly verifiable
5 by reference to an external and uniform benchmark or criteria available and knowable to both the
6 development applicant . . . and the public official.” *Id.*, at 300. In reversing the trial court’s
7 application of only a “deferential” abuse of discretion standard to the respondent city’s denial of
8 the project at issue, the Court of Appeal held that “the City was *not* given discretion to impose
9 conditions and then determine whether they were satisfied. It was *required* to approve the
10 development project if the conditions specified by the *Legislature* were met.” 63 Cal. App. 5th at
11 301; *id.*, at 300-301 (“[t]he Legislature’s choice of language makes obvious its intent to constrain
12 local governments’ discretion”). Such “factual determinations [that] are based strictly on
13 objective data” are not, and cannot be, discretionary. *Venice Town Council, Inc. v. City of Los*
14 *Angeles*, 47 Cal. App. 4th 1547, 1562–63 (1996).

15 Second, to meet this “objective” standard, SB-946 specifies that any “health, safety, or
16 welfare concern” must be “directly related” to the vendor conduct that a local jurisdiction intends
17 to restrict. As an example – discussed more fully below – the City’s Ordinance sought to address
18 this statutory requirement by alleging in a “Whereas” clause that sidewalk vending near “popular
19 tourist attractions and concert and sports venues” produces “overcrowding on sidewalks, which
20 results in pedestrians walking in the street.” Pet. ¶ 43. But this assertion is baldly conclusory, and
21 nowhere specifies when, where or to what extent “overcrowding on sidewalks” and “pedestrians
22 walking in the street” actually takes place. *Id.* ¶¶ 46-47. Nor does this statement specify whether,
23 where, or to what extent sidewalk vendors, as opposed to such other causes, are responsible for the
24 purported concern in question. *Id.* Certainly, in areas of “popular tourist attractions” and “sports
25 venues,” multiple other causes, such as moviegoers lining up at theatres, sports enthusiasts waiting
26 to enter sporting venues, tourists waiting for tour buses, street solicitors and performers seeking
27 tips, to name only a few, may very well cause crowding on sidewalks, and potentially pedestrians
28 walking on the street, but in the City’s Whereas clause these other causes are wholly ignored. SB-

1 946’s “directly related” language thus requires a local authority to establish a genuine and
2 meaningful connection between the asserted concern and the particular vendor conduct in
3 question, including, where applicable, taking account of other causes of the asserted concern.
4 *E.g.*, Pet. ¶¶ 2, 46-47.

5 Third, SB-946 provides that neither “perceived community animus [n]or economic
6 competition” with other local merchants can “constitute an objective health, safety, or welfare
7 concern” under this standard. In their Demurrer, Respondents assert that the Petition and
8 Complaint offers “no direct support” demonstrating that “perceived community animus or
9 economic competition favoring brick-and-mortar businesses” motivated some or all of the City’s
10 highly restrictive vending limitations. Mem. 1, 6-7. This argument is of no moment on demurrer,
11 as Petitioners’ pleading “need only allege facts sufficient to state a cause of action; each
12 evidentiary fact that might eventually form part of the plaintiff’s proof need not be alleged.” *C.A.*
13 *v. William S. Hart Union High Sch. Dist.*, 53 Cal. 4th 861, 872 (2012). The record of the
14 Ordinance’s adoption laid out in the Petition and Complaint is replete with demands by
15 neighborhood associations to “opt out of” allowing lawful sidewalk vending and repeated efforts
16 by local businesses and Council members alike to require vendors to obtain the consent of nearby
17 businesses before being allowed to vend – certainly clear evidence of just this sort of pressure was
18 being brought to bear upon the City officials preparing the Ordinance. Pet. ¶¶ 36–43. Although
19 the State’s adoption of SB-946 eventually blocked such overt measures to exclude sidewalk
20 vending, the impact of such lobbying is nonetheless readily apparent in, for example, the blanket
21 exclusion of sidewalk vendors from so many of the City’s most important retail venues and the
22 overreaching additional 500 foot exclusion areas surrounding these venues.¹ *E.g.*, Pet. ¶ 49.

23 As the foregoing discussion demonstrates, SB-946’s “objective health, safety, or welfare
24 concerns” provisions provide the “clearly define[d]” standard of conduct that local authorities
25 must follow that is the hallmark of a “ministerial duty.”

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28 ¹ In further proceedings in this action, Petitioners expect to explore more fully the impact of
expressions of community animus and complaints from local merchants upon the shaping of the
final Ordinance.

1 **2. Respondents’ attempts to establish their unfettered discretion to restrict**
2 **sidewalk vending within the City fail outright.**

3 To support their claims of broad, open-ended discretion to restrict sidewalk vending within
4 the City in the face of SB-946’s statutory provisions, Respondents argue as follows.

5 Initially, limiting their focus to only the “exception” language in subparts (b)(1), (b)(4)(A)
6 and (c) of § 51038 (“except when that restriction is directly related to objective health, safety, or
7 welfare concerns”), Respondents contend that this language on its face establishes the City’s
8 discretion to determine for itself whether, and to what extent, sidewalk vending should be
9 permitted. Mem. 4 (this “exception language . . . presupposes that the local authority exercises its
10 discretion in determining whether the risk justifies the location of sidewalk vending”). But, as the
11 preceding discussion demonstrates, far from granting discretion to the City, § 51038’s subparts
12 (b)(1), (b)(4)(A) and (c) instead define a compulsory standard that confines a local authority to
13 restricting sidewalk vending only in circumstances where the mandatory and “objective”
14 requirements of SB-946’s exception language can be established. Moreover, the overriding
15 command of § 51038(b) is that a local authority’s “sidewalk vending program *shall comply with*
16 *all of the following standards.*” Cal. Gov’t Code § 51038(b). In other words, each of § 51038’s
17 subparts – including (b)(1), (b)(4)(A) and (c) – sets forth a mandatory standard, all parts of which,
18 including the “exception” language, act to constrain decisions by local authorities to restrict
19 vending within their territories. Indeed, if Respondents’ view of this “exception” language was
20 accepted, this language would effectively defeat the clear purpose of § 51038 -- to limit the ability
21 of local authorities to exclude sidewalk vendors from the public right-of-way to only those
22 circumstances in which the express terms of the “objective health, safety, or welfare concerns”
23 standard are met.

24 Elsewhere in the Demurrer, Respondents seek to bolster their position by citing case law
25 defining “discretion” as “the power conferred on public officials to act according to the dictates of
26 their own judgment,” and contrasting this with the definition of a “ministerial” duty – actions a
27 public officer must “perform . . . in a prescribed manner in obedience to legal authority and
28 without regard to the officer’s own judgment or opinion.” Mem., at 4 (citing *Lockyer v. City and*
Cnty. of San Francisco, 33 Cal. 4th at 1082). But on their face, these definitions prove exactly the

1 opposite. The express language of § 51037 & § 51038 quoted above plainly fits the definition of a
2 ministerial act (that which a public officer must perform “in a prescribed manner in obedience to
3 legal authority”) and not the definition of “discretion” (an officer’s power to act pursuant to
4 “dictates of their own judgment”).

5 In short, Respondents go too far in their contention that Petitioners “may not obtain
6 judicial relief via writ of mandate. . . .” Mem. 1. Respondents’ mandatory duties to fully comply
7 with SB-946 certainly “may be enforced by writ of mandate.” *Venice Town Council, Inc. v. City*
8 *of Los Angeles*, 47 Cal. App. 4th 1547, 1562–63 (1996). Simply put, nowhere in their Demurrer
9 do Respondents demonstrate that, notwithstanding the terms of SB-946, the City retains the open-
10 ended discretion to determine whether or to what extent it can impose no-vending zones or related
11 restrictions on sidewalk vending. In itself, this demonstrates that Respondents’ Demurrer fails as
12 a matter of law.

13 **B. Respondents’ Contention That No Abuse Of Discretion By The City Has Been**
14 **Shown Is Without Merit.**

15 Respondents also contend that Petitioner’s writ of mandate cause of action fails because no
16 abuse of discretion on the part of the City has been shown. To begin with, this contention
17 necessarily rests on the assumption that SB-946 imposes no mandatory or ministerial duties upon
18 the City, thereby reserving for the City a discretionary decision to determine whether, or to what
19 extent, sidewalk vendors can be barred from any part of its public right-of-way. Since quite the
20 opposite is true, as demonstrated by the foregoing, this attempt to apply the “highly deferential”
21 abuse of discretion standard of review collapses of its own accord.

22 Even assuming, *arguendo*, that an abuse of discretion standard of review could be applied
23 here, Respondents nonetheless would be required to demonstrate that the City has applied SB-
24 946’s “objective health, safety, or welfare concerns” standard in a manner that (1) “conform[s] to
25 the law” and (2) is not arbitrary, capricious, or lacking in evidentiary support. *E.g., Bull Field,*
26 *LLC v. Merced Irrigation Dist.*, 85 Cal. App. 5th 442, 456 (2002) (setting forth this standard). To
27 the contrary, the Petition and Complaint’s well pleaded allegations demonstrate that, at all times,
28 Respondents have proceeded to impose sweeping restrictions on sidewalk vendors’ access to the

1 public right-of-way without even a cursory attempt to comply with SB-946 and its “objective
2 health, safety, or welfare concern” standard. As examples:

- 3 • The City’s “no-vending” zones and 500 foot exclusion areas were proposed in a
4 November 2017 report of the Chief Legislative Analyst in virtually the same form as
5 they take today, nearly a year before SB-946 was enacted, and were approved by the
6 City Council not long after. At these times, no City official could have anticipated
7 either that the State would in fact adopt this statute or that it would contain the
8 “objective health, safety, or welfare concerns” standard that it includes today. Pet. ¶ 39.
- 9 • In July 2018, the City Attorney circulated a draft Ordinance that carried forward the “no
10 vending” zones and 500 foot exclusion areas in the same form as they exist today. The
11 City’s record contains no indication that either the City Attorney or City Council
12 members were in fact tracking the progress of SB-946 in the Legislature or were aware
13 that, if enacted, it would include the “objective health, safety, or welfare concerns”
14 standard. Pet. ¶ 40.
- 15 • In September 2018, after SB-946 was approved, the Council requested City staff to
16 prepare “a new Sidewalk Vending Ordinance consistent with SB-946.” However, after
17 the Council received the City staff’s report addressing steps that might be taken to
18 conform the Ordinance to SB-946’s requirement but nowhere mentioning the “no-
19 vending” zones, Council members promptly informed City staff that the revised
20 Ordinance must contain *all* “no-vending” zones previously proposed, and directed the
21 City Attorney to “prepare and present findings based on health, safety and welfare for
22 the no-vending zones identified by [the] Council.” Pet. ¶ 41.
- 23 • Notably, City staff never prepared or presented to the Council any such findings. Nor
24 did they provide any other meaningful analyses addressing the “no-vending zones” or
25 otherwise attempting to justify their adoption under the terms of SB-946. Nonetheless,
26 on November 28, 2018, the Council adopted a final Ordinance that included all of the
27 “no-vending” zones previously identified, along with two *additional* zones covering the
28 Venice Boardwalk and El Pueblo de Los Angeles Historical Monument. Pet. ¶¶ 5, 43-
44. At no time, either at the adoption of the Ordinance or thereafter, did the Council
meaningfully address the “no-vending” zones now included in the Ordinance.

21 In an attempt to find justification in the Council record for the “no vending” zones and 500
22 foot exclusion areas, Respondents have submitted a request for judicial notice addressing three
23 documents. RJN, at 1. These documents cannot properly be considered at this time as
24 establishing the truth of the matters asserted therein. *E.g., Julian Volunteer Fire Co. Assn. v.*
25 *Julian-Cuyamaca Fire Protection Dist.*, 62 Cal. App. 5th 583, 600 (2021) (a court “generally may
26 not take judicial notice of the truth of the facts asserted within documents.”) In any event, neither
27 the November 2017 report of the Chief Legislative Analyst nor the Ordinance itself offers any
28 support for Respondents’ abuse of discretion argument. The November 2017 report of the Chief

1 Legislative Analyst contains the first City proposal of “no-vending” zones and surrounding 500
2 foot exclusion areas around them as a potential part of the City’s vending program. *See* RJN No.
3 3 at 6. Unsurprisingly, the report nowhere includes any data, documentation or analysis
4 identifying or evaluating potential “health, safety, or welfare concerns” presented for any of these
5 proposed sites, although it speculates in passing that “Hollywood Boulevard . . . may require
6 restrictions given the level of safety concerns raised as a result of high commercial activity and the
7 number of visitors.” Moreover, because this report was prepared *nearly a year before* SB-946 was
8 enacted, it could not possibly have addressed the specific elements and requirements of SB-946’s
9 future “objective health, safety, or welfare concerns” standard.

10 The second document for which judicial notice is requested is the final Ordinance, from
11 which Respondents quote the Whereas clause discussed above:

12 WHEREAS, vending within 500 feet of popular tourist attractions and concert
13 and sport venues on event days impacts pedestrian, tourist and vendor safety due to
14 overcrowding on sidewalks, which results in pedestrians walking in the street and
15 along the sidewalk to keep moving forward. These venues also experience a high
amount of traffic, affecting the safety of pedestrians and motorists, due to a high
concentration of visitors at one time.

16 Contrary to Respondents’ assertion that this language “ma[kes] clear that the [‘no-vending’ zones
17 contained in the Ordinance] were directly related to an objective health, safety or welfare
18 concern,” it does nothing of the sort. First, each of the “no-vending” zones varies in important
19 respects from the others, requiring that each zone receive individual consideration to determine
20 whether the statutory “objective health, safety, or welfare concerns” standard was satisfied. Pet. ¶
21 48. Second, the Ordinance’s assertion that sidewalk vending in venues of this kind causes
22 pedestrians to walk in the street is entirely conclusory, and is nowhere supported by data,
23 documentation or other evidence. Entirely missing, for example, is any discussion or analysis of
24 (1) when, where and to what extent pedestrians or tourists have in fact encroached onto the streets,
25 (2) whether, and to what extent (if any), any such pedestrian encroachment is attributable to
26 sidewalk vending as opposed to other causes, and (3) whether additional or different steps could
27 be taken by police or other City authorities to manage sidewalk crowding in these areas, such as
28 street or lane closures, designated pedestrian lanes, additional traffic personnel in crowded areas,

1 or the like. This absence of “objective” facts and data is particularly glaring given that the City
2 itself, through StreetsLA for example, likely possesses extensive facts and data that could address
3 such issues, or at least is in the best position to collect and review such facts and data. Pet. ¶ 47.
4 As such, nothing in the Ordinance’s Whereas clause comes anywhere close to satisfying SB-946’s
5 “objective health, safety, or welfare concerns” standard.

6 The third document for which judicial notice is sought consists of several photographs
7 apparently submitted to the Council by members of the public in October 2018. Mem., at 7.
8 These photographs purport to depict sidewalk vending and pedestrians among Hollywood
9 Boulevard. *Id.*

10 To begin with, these photographs have not been properly authenticated and do not
11 constitute a matter that may be judicially noticed. Evid. Code, §§ 1400, 1401; *see People v.*
12 *Bowley*, 59 Cal. 2d 855, 862 (1963) (“No photograph or film has any value in the absence of a
13 proper foundation”). Moreover, even if such foundational information is assumed, nothing in
14 these photographs in any way supports the asserted harms or concerns asserted in the Ordinance’s
15 Whereas clause – no images of meaningful sidewalk congestion or people walking in the street,²
16 merely sidewalk vendors plying their trades on a City sidewalk, as takes place daily on many
17 streets across the City.

18 In sum, Respondents’ abuse of discretion argument fails outright.

19 **C. Respondents’ Claim That This Court May Not Grant The Relief Sought Here**
20 **Also Fails.**

21 Citing the dictum that a court may not compel a public official to exercise its decision in a
22 particular manner, Respondents argue that this court may not grant the relief sought in Petitioners’
23 writ of mandate cause of action. At this early stage, without further development of Petitioners’
24 claims, Respondents’ request is plainly premature, and might reasonably be dismissed without
25 prejudice for this reason alone. But more fundamentally, Respondents’ argument is without merit.

26 _____
27 ² In fact, one of the photographs depicts pedestrians safely using the sidewalk and crosswalk along
28 what appears to be Hollywood Boulevard. As such, rather than support any claim that sidewalk
vendors may cause “pedestrians walking in the streets,” these photographs illustrate the safe co-
existence of pedestrians and sidewalk vendors in even one of the most popular tourist destinations.
See RJN No. 2.

1 Like all other parts of their Demurrer, Respondents rest this argument on their unsupported
2 contention that, notwithstanding SB-946 and its clear statutory language supporting Petitioners'
3 claims, the City alone enjoys unfettered discretion in imposing restrictions excluding sidewalk
4 vendors from operating in the public right of way. As this contention fails, so does Respondents'
5 argument addressed in this section.

6 **Conclusion**

7 For the foregoing reasons, Petitioners respectfully request that this Court overrule
8 Respondents' demurrer.

9
10 Dated: March 3, 2023

Respectfully,

ARNOLD & PORTER KAYE SCHOLER LLP

11
12
13 By: /s/ Matthew T. Heartney
14 Matthew T. Heartney
15 Attorneys for Petitioners and Plaintiffs

16 Dated: March 3, 2023

Respectfully,

PUBLIC COUNSEL LAW CENTER

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18
19 By: /s/ Katherine J.G. McKeon
20 Katherine J.G. McKeon
21 Attorneys for Petitioners and Plaintiffs

1 **PROOF OF SERVICE**

2 I am over eighteen years of age and not a party to this action. I am employed in the County
3 of Los Angeles, State of California. My business address is 777 South Figueroa Street, Forty-Fourth
4 Floor, Los Angeles, California 90017-5844.

5 On March 3, 2023, a true and correct copy of the foregoing document entitled
6 **PETITIONERS’ OPPOSITION TO RESPONDENTS’ DEMURRER** will be served or was
7 served in the manner stated below:

8 **By Mail (CCP § 1013(a)):** I enclosed said document(s) in a sealed envelope or package to each
9 addressee listed below. I placed said envelope for collection and mailing, following our ordinary
10 business practices. I am readily familiar with the firm’s practice of collection and processing
11 correspondence for mailing. On the same day that correspondence is placed for collection and
12 mailing, it is deposited in the ordinary course of business with the U.S. postal service with postage
13 fully prepaid.

14 **By Electronic Service (E-mail) (CRC § 2.251(c)(3)):**

15 I caused the document(s) to be sent to each addressee’s email address as set forth below or on
16 the attached service list. I did not receive, within a reasonable time after the transmission, any
17 electronic message or other indication that the transmission was unsuccessful.

18 I caused the document(s) to be served upon the above-interested party(ies) using a court
19 approved electronic filing service provider to the electronic service address.

20 **By Personal Service:** I enclosed said document(s) in a sealed envelope or package to the
21 following address(es). I provided them to a professional messenger service for service to be
22 delivered by hand to the offices of the addressee(s).

23 City of Los Angeles Defendant
24 c/o Office of the City Clerk
25 200 North Spring Street, Room 360
26 Los Angeles, CA 90012
27 emerson.kim@lacity.org
28 gabriel.dermer@lacity.org

Los Angeles City Council Defendant
c/o Office of the City Clerk
200 North Spring Street, Room 360
Los Angeles, CA 90012
emerson.kim@lacity.org
gabriel.dermer@lacity.org

Bureau of Street Services Defendant
c/o Office of the City Clerk
200 North Spring Street, Room 360
Los Angeles, CA 90012
emerson.kim@lacity.org
gabriel.dermer@lacity.org

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By Overnight Delivery (CCP §§ 1013(c), (d)): I enclosed said document(s) in a sealed envelope or package provided by an overnight delivery carrier to the following address(es). I placed the envelope or package, delivery fees paid for, for collection and overnight delivery at our office for pick up by the carrier on the same day.

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

Federal I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made.

Dated: March 3, 2023

Signature: Christine Sohn

Christine Sohn

Email: Christine.Sohn@arnoldporter.com