ONLINE SERVICES

Tentative Rulings

DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: 22STCP04289 **Hearing Date:** March 16, 2023 **Dept:** 85

Community Power Collective et al v. City of Los Angeles, Los Angeles City Council, Bureau of Street Services, 22STCP04289

Tentative decision on demurrer: overruled

Respondents City of Los Angeles ("City"), Los Angeles City Council ("City Council"), and Bureau of Street Services ("Bureau") (collectively, "City"), demur to the Petition filed by Petitioners Community Power Collective, East Los Angeles Community Corporation, Inclusive Action for the City, Merlin Alvarado ("Alvarado"), and Ruth Monroy ("Monroy").

The court has read and considered the moving papers, opposition, and reply,[1] and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioners filed the Petition against Respondents on December 6, 2022, alleging claims for traditional mandamus and declaratory relief and a remedy of injunctive relief. The Petition alleges in pertinent part as follows.

As of 2013, the City banned sidewalk vending. Pet., ¶35. In 2013, the City took up the subject of lifting the prohibition and regulating sidewalk vending and conducted substantial public outreach for this purpose. Pet., ¶35. Public comment

divided between favoring regulations that allowed sidewalk vendors to operate with regulations and not lifting the restrictions at all. Pet., ¶36. A November 2016 framework included several highly restrictive provisions favored by opponents of sidewalk vending. Pet., ¶37.

On January 31, 2017, the City Council voted to decriminalize sidewalk vending and approved in concept a program to regulate it. Pet., ¶38. The City Council directed the City's Chief Analyst, together with the City Attorney, to draft regulations for a process to create special vending districts. Pet., ¶38. Permit requirements under the regulations would mitigate risk to the City and adjacent property owners and businesses by requiring consent of adjacent business or property owners. Pet., ¶38. The regulations would also include economic concerns as a reason to create special vending districts and establish criteria for a list of no-vending areas. Pet., ¶38.

On November 3, 2017, the Chief Legislative Analyst submitted a detailed report recommending regulations that prohibit vending within 500 feet of specified venues, direct City staff to work with each Council District office to develop regulations specific to that district, and impose a limit of two vending carts on any single block in the commercial area. Pet., ¶39. The report did not include the City Council's recommendation that sidewalk vendors obtain the consent of adjacent property owners. Pet., ¶39. The report instead suggested that the City Council work with the City Attorney in closed session if it still wanted to pursue adjacent property owner consent. Pet., ¶39. The report advised that limiting vending in preference of one form of economic activity would not be advisable. Pet., ¶39.

In April 2018, the City Council approved the principal portions of the report and directed the City Attorney to present a draft ordinance. Pet., ¶40. The City Council instructed that the ordinance shall include a process to notify adjacent business owners of potential vending permits and an appeal process. Pet., ¶40. On July 2, 2018, the City Attorney presented a draft ordinance that did not require sidewalk vendors to obtain the consent of adjacent business owners. Pet., ¶40.

In September 2018, the state Legislature enacted SB-946, which establishes statewide standards for sidewalk vending, effective January 1, 2019 and prohibits local governments from regulating sidewalk vendors except as SB-946 it permits. Pet., ¶30; Government Code[2] §50937(a). Certain restrictions are permitted to restrict sidewalk vending when it is justified by objective health, safety, or welfare concerns directly related to vendor conduct and restrictions, including (a) requiring

vendors to operate only in a designated neighborhood or area (§51038(b)(4)(A)), (b) limiting operations to a specific part of the public right-of-way (§51038(b)(1)), and (c) restricting time, place, and manner of sidewalk vending (§51038(c)). Pet., ¶31. Perceived community animus and economic competition do not constitute an objective health, safety, or welfare concern. Pet., ¶32; §51038(e). In these provisions, the Legislature sought to bar local restrictions on sidewalk vending unless necessary to prevent real and demonstrable injury or harm to the public. Pet. ¶32.

The legislative findings for SB-946 state that the regulation of sidewalk vending involves matters of statewide concern. Pet., ¶33. Unnecessary barriers have blocked aspiring vendors from accessing the formal economy, and the interest in the regulation of traffic to ensure pedestrian safety on the road or sidewalk calls for regulation by the state. Pet., ¶33.

The City Council asked the City Attorney and Chief Legislative Analyst to draft a new ordinance consistent with SB-946. Pet., ¶41. On October 15, 2018, the Chief Legislative Analyst issued a report reviewing SB-946's requirements and offering suggestions how some ordinance provisions, like the two carts per City block limitation, might be justified under the law. Pet., ¶41. The report did not address the no-vending zones proposed in the earlier November 2017 report or how they could be justified in light of SB-946's health, safety, or welfare standard. Pet., ¶41. The City Council voted to direct that the revised ordinance must include the no-vending zone provision approved on April 17, 2018 and instructed the City Attorney and Chief Legislative Analyst to prepare findings for those no-vending zones based on health, safety, and welfare. Pet., ¶41.

On November 15, 2018, the City Attorney transmitted a revised draft ordinance that retained the no-vending zones in the July 2018 draft ordinance and added no-vending zones for the Venice Beach Boardwalk (with the exception of First Amendment protected activities) and El Pueblo de Los Angeles Historical Monument. Pet., ¶42. It also authorized the Bureau of Street Services and the Department of Recreation and Parks to establish additional restrictions on sidewalk vending based upon health, safety, and welfare concerns. Pet., ¶42. The November 2018 draft included a "whereas" recital that vending within 500 feet of popular attractions crowds the sidewalk and forces pedestrians onto the street in heavy traffic areas. Pet., ¶43. The assertion was conclusory and not supported by any documentation, factual observations, or other evidence. Pet., ¶43.

Eight weeks after SB-946 passed, the City adopted Ordinance No. 185900 (the "Ordinance"), which contains an urgency clause that claims that the Ordinance is

important for the immediate protection of public peace, health and safety. Pet., ¶34. To protect public health, safety, and welfare, the Ordinance's vending regulations were to be implemented by January 1, 2019, the effective date of SB-946. Pet., ¶34. The Ordinance prohibits vending within 500 feet of eight specified locations, with some exceptions for event days and First Amendment protected expression, and well as any other venue as subsequently determined by the Board of Public Works or Board of Recreation and Parks Commissioners. Pet., ¶44, Ex. A. These are the most vibrant and lucrative retail venues, and restrictions in these areas undercut the goal of providing economic opportunities to venders. Pet., ¶45.

The Ordinance's purported objective health, safety, and welfare concern is that sidewalk vending in tourist areas and sports venues causes overcrowding that leads to pedestrians walking in the street. Pet., ¶¶ 46-47. This conclusory assertion is not supported by data, documentation, or evidence that is a sidewalk crowding problem attributable to street vendors with no alternative solution. Pet., ¶47. The lack of data is significant given hat the City possesses extensive data, or can easily collect such data. Pet., ¶47. The challenged no-vending zones are sufficiently different that each required its own analysis, but the Ordinance gives a uniform explanation for excluding all vendors within 500 feet of these lucrative vending areas. Pet., ¶48. For some of these zones, 500 feet creates so large a buffer area that vendors at that distance would not be visible to potential customers. Pet., ¶49. The buffer is calculated not to protect pedestrians, but to protect brick-and-mortar locations in the area. Pet., ¶49. This differential treatment of sidewalk vendors infringes on constitutional guarantees of due process and equal protection under the law. Pet., ¶50; Cal. Const. Art. I, §7.

While SB-946 limits restrictions on sidewalk vending to the immediate vicinity of swap meets, farmers' markets, and areas designated for a temporary special permit issued by the local authority, the City's Rules and Regulations exclude vendors from operating anywhere within 500 feet of such locations or events. Pet., ¶51(a).

SB-946 only allows local governments to limit sidewalk vendors to specific parts of the public right-of-way when the restriction is directly related to objective health, safety, or welfare concerns. Pet., ¶51(b). However, the City's Rules and Regulations create 500-feet no-vending zones around schools, limit sidewalk vendors to a strip adjacent to the street that is the lesser of five feet or a third of the street wide, and prohibit stationary vending in front of any building. Pet., ¶51(b). The City has not provided an objective health, safety, or welfare concern in support of this requirement. Pet., ¶51(b).

The City's sole justification for the no-vending zones is that sidewalk vendors may create overcrowding or congestion. Pet., ¶53. Yet, in May 2020, the City instituted an Al Fresco program that authorizes restaurants and bars to serve customers in outdoor dining areas on the sidewalks adjoining their premises. Pet., ¶54. This undercuts the idea that the no-vending zones combat sidewalk overcrowding or congestion. Pet., ¶¶ 53, 55.

Petitioners Alvarado and Monroy operate carts along Hollywood Boulevard. Pet., ¶20. Since passage of the Ordinance, Alvarado has received 30 citations for operating in a no-vending zone and Monroy has received Notice of Violations ("NOVs") for the same. Pet., ¶20. The City owes a legal duty to cancel and expunge all citations and NOVs it issued pursuant to violations of the challenged no-vending zones and other restrictions under the Ordinance because they violate SB-946. Pet., ¶65.

Petitioners seek a writ of mandate and injunction compelling Respondents to withdraw and cease all enforcement of portions of the Ordinance and accompanying regulations complained of in the Petition and determine that these provisions are unenforceable and void. Pet. Prayer for Relief, ¶¶ 1-2, 4. Petitioners also seek injunctive relief to prohibit retaliatory or harassing enforcement of the Ordinance against vendors. Pet. Prayer for Relief, ¶3. Petitioners further seek an order to cancel and expunge all past citations and NOVs issued in violation of SB-946 and reimburse, repay, or cancel the unlawful penalties, fines and other amounts imposed upon Alvarado and Monroy. Pet. Prayer for Relief, ¶6.

2. Course of Proceedings

On December 8, 2022, Petitioners personally served the Bureau, City, and City Council with the Petition and Summons.

B. Applicable Law

Demurrers are permitted in administrative mandate proceedings. CCP §§1108, 1109. A demurrer tests the legal sufficiency of the pleading alone and will be sustained where the pleading is defective on its face.

Where pleadings are defective, a party may raise the defect by way of a demurrer or motion to strike or by motion for judgment on the pleadings. CCP §430.30(a); Coyne v. Krempels, (1950) 36 Cal.2d 257. The party against whom a complaint or cross-complaint has been filed may object by demurrer or answer to the pleading. CCP §430.10. A demurrer is timely filed within the 30-day period after service of the complaint. CCP §430.40; Skrbina v. Fleming Companies, (1996) 45 Cal.App.4th 1353, 1364.

A demurrer may be asserted on any one or more of the following grounds: (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading; (b) The person who filed the pleading does not have legal capacity to sue; (c) There is another action pending between the same parties on the same cause of action; (d) There is a defect or misjoinder of parties; (e) The pleading does not state facts sufficient to constitute a cause of action; (f) The pleading is uncertain; (g) In an action founded on a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct; (h) No certificate was filed as required by CCP sections 411.35 or 411.36. CCP §430.10.

A demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. CCP §430.30(a); Blank v. Kirwan, (1985) 39 Cal.3d 311, 318. The face of the pleading includes attachments and incorporations by reference (Frantz v. Blackwell, (1987) 189 Cal.App.3d 91, 94), but it does not include inadmissible hearsay. Day v. Sharp, (1975) 50 Cal.App.3d 904, 914.

The sole issue on demurrer for failure to state a cause of action is whether the facts pleaded, if true, would entitle the plaintiff to relief. Garcetti v. Superior Court, ("Garcetti") (1996) 49 Cal.App.4th 1533, 1547; Limandri v. Judkins, (1997) 52 Cal.App.4th 326, 339. The question of plaintiff's ability to prove the allegations of the complaint or the possible difficulty in making such proof does not concern the reviewing court. Quelimane Co. v. Stewart Title Guaranty Co., (1998) 19 Cal.4th 26, 47.

The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. Marshall v. Gibson, Dunn & Crutcher, (1995) 37 Cal.App.4th 1397, 1403. This rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. Vance v. Villa Park Mobilehome Estates, ("Vance") (1995) 36 Cal.App.4th 698, 709.

For all demurrers filed after January 1, 2016, the demurring party must meet and confer in person or by telephone with the party who filed the pleading for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. CCP §430.31(a). As part of the meet and confer process, the demurring party must identify all of the specific causes of action that it believes are subject to demurrer and provide legal support for the claimed deficiencies. CCP §430.31(a)(1). The party who filed the pleading must in turn provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. Id. The demurring party is responsible for filing and serving a declaration that the meet and confer requirement has been met. CCP §430.31(a)(3).

"[A] demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred." State ex rel. Metz v. CCC Information Services, Inc., (2007) 149 Cal.App.4th 402, 413.

If a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed. CCP §472a(c). However, in response to a demurrer and prior

to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. CCP §430.41(e)(1).

C. Statement of Facts[3]

Additional admissible facts from the judicially noticed documents and Petition exhibits are as follows.

The Chief Legislative Analyst's November 2017 report identifies a list of criteria to use to determine where the City should establish no-vending areas. RJN Ex. 1 (Attachment 2, p. 2). These criteria include (a) inadequate parking that creates unsafe conditions, (b) narrow or sloping sidewalks, (c) a declaration by the Department of Public Works that a sidewalk is unsafe for pedestrians or installation of food equipment, (d) alleys, (e) City-owned property, (f) pedestrian safety, and (g) compliance with community plans. RJN Ex. 1 (Attachment 2, p. 2). The report lists Hollywood Boulevard as an example because it has a high level of commercial activity and many visitors. RJN Ex. 1 (Attachment 2, p. 2).

The Ordinance includes a recital that vending within 500 feet of popular tourist attractions, plus concert and sport venues on event days, impacts pedestrian, tourist, and vendor safety. RJN Ex. 3. Overcrowding on sidewalks forces pedestrians to keep moving forward and step into the street, and the high volume of traffic threatens both pedestrians and motorists. RJN Ex. 3.

Vending is prohibited within 500 feet of (1) the Hollywood Walk of Fame, Universal Studios, and the El Pueblo de Los Angeles Historical Monument, (2) Dodger Stadium, the Hollywood Bowl, Staples Center, and the LA Coliseum on event days, and (3) any other venue as determined by the Board of Public Works or Board of Recreation and Parks Commissioners as published in the Rules and Regulations. LAMC 42.13.C.2(b) (RJN Ex. 3).

The Petition's map shows that the no-vending zone for the Hollywood Walk of Fame includes one block on either side of Hollywood Boulevard, plus two more blocks in either direction on the southern edge. FAP Ex. A, p. 3.

D. Analysis

The City demurs to the Petition, asserting that its duty under SB-946 is discretionary and not ministerial (Dem. at 4-5), and that Petitioners cannot demonstrate an abuse of discretion (Dem. at 5-9).

1. Discretionary v. Ministerial Duty

A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, (1991) 1 Cal.App.4th 495, 501-02. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84 (internal citations omitted).

A ministerial duty is one a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Lockyer v. City and Cnty. of San Francisco, ("Lockyer") (2004), 33 Cal. 4th 1055, 1082; Ellena v. Department of Insurance, (2014) 230 Cal.App.4th 198, 205. It is "essentially automatic based on whether certain fixed standards and objective measures have been met." Sustainability of Parks, Recycling & Wildlife Legal Defense Fund v. County of Solano Dept. of Resource Mgmt., ("Sustainability of Parks") (2008) 167 Cal.App.4th 1350, 1359. In contrast, a discretionary act involves the exercise of judgment by a public officer. County of Los Angeles v. City of Los Angeles, (2013) 214 Cal.App.4th 643, 653-54. Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

Under SB-946, a "sidewalk vendor" is a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. §51036(a). A local authority shall not regulate sidewalk vendors except in accordance with sections 51038 and 41039. §51037(a).

A local authority may adopt a program to regulate sidewalk vendors. §51038(a). The program shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns. §51038(b)(1). A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns. §51038(b)(4)(A). A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns. §51038(c). A local authority may prohibit vendors operating in the immediate vicinity of a farmer's market, permitted swap meet, or an area designated for a temporary special permit during the limited operating hours of the farmer's market or swap meet, or for duration of the event. §51038(d)(1), (2). A violation of a local authority's sidewalk vending program is punishable only by listed penalties. §51039.

The City argues that section 51038 creates a discretionary, not ministerial, duty. It does not impose a duty requiring a city[4] to limit sidewalk vending at all and only limits a city's ability to confine vendors to specific zones. §50138(b)(4)(A). Dem. at 1, 4. Moreover, the plain language of "objective health, safety, or welfare concerns" presupposes that the city will exercise its discretion in determining whether the risk justifies limiting the location of sidewalk vending. The city must assess where a health, safety, or welfare risk to the public justifies limitation and to what extent based upon objective facts. Section 50138(c) also permits time, place, and manner restrictions on sidewalk vending if directly related to objective, health, safety, or welfare concerns, including

requirements for sanitary conditions, compliance with the federal Americans with Disabilities Act, and compliance with other laws, all of which inherently requires discretion. Dem. at 4.

Petitioners rely on the limitations in sections 51038(b)(1), (b)(4)(A), (c), and (d)(1), (2), contending that the requirement that the limitation must be "directly related to objective health, safety, or welfare concerns" is a standard that easily fits the definition of ministerial duty. The requirement that the health, safety, or welfare concern must be "objective" removes any subjective judgment that a city may make from whether it can impose restrictions on street vendors. Petitioners add that a city's limitation must be directly related to this objective standard, which requires the city to establish a genuine and meaningful connection between the concern and the vending conduct at issue, including other possible causes for the concern. According to Petitioners, this is the hallmark of ministerial duty. Opp. at 10-11.

It is true that SB-946 limits a city's ability to regulate sidewalk vending, essentially requiring that the decision to do so must relate to objective health, safety, and welfare concerns. Reply at 1. Yet, a city retains considerable discretion in doing so and is not cabined by "fixed standards and objective measures". Sustainability of Parks, *supra,* 167 Cal.App.4th at 1359.

First, the city must decide to regulate sidewalk vending. Nothing in SB-946 requires a city to regulate it, and this is a discretionary decision by the city's legislative body.

Second, while the city is limited to objective health, safety, or welfare concerns, the city must decide what those objective concerns are. Although section 51038(b) refers to the restriction to health, welfare, or safety concerns as a "standard", the court would not describe it as a standard because it is not sufficiently specific. More accurately, it is a limitation on the city's determination of the standard. It is up to the city to decide what the standard is, so long as it is objective and concerns a subject matter of health, safety, or welfare. Section 51038 precludes the city from relying on subjective criteria in setting this standard, but that is only a limitation on the city's exercise of discretion and does not eliminate it.

For this reason, Petitioners' reliance on Ruegg & Ellsworth v. City of Berkeley, ("Ruegg") 63 Cal. App. 5th 277 is inapt. *See* Opp. at 9-10. In Ruegg, the court interpreted section 69513.4(a) of the Housing Accountability Act, which requires a ministerial approval process by a city for certain affordable housing projects where the city is non-compliant with its housing share responsibilities. Id. at 291-92. Section 69513.4(a) provides that if a proposed development project meets the objective planning standards set forth in the statute -- including that it is a multifamily development, located on a site zoned for residential or mixed-use, at least 2/3 of the development is designated for residential use, and it is "consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time" – it is subject to a streamlined, ministerial approval process and not subject to a discretionary conditional use permit. Id. at 292. If the city finds that the project conflicts with any of these objective planning standards, it must provide a written explanation. Id. The court stated that the ministerial approval process required approval of the development project if the conditions specified by the Legislature were met (id. at 301) and among other issues, upheld the statute against the city's right to home rule. Id. at 323-24.

In Ruegg, the objective standards are set forth both in section 69513(a) and a city's objective zoning and design review standards. In contrast, SB-946 sets no objective health, safety, or welfare standards, leaving that determination to the city's

discretion.

Third, a city must determine whether the limitation "directly relates" to the objective standard, objective health, safety, or welfare standard. This determination is a matter of judgment and discretion.

In short, SB-946 places limitations on a city's regulation of sidewalk vendors such that it must be based on objective health, safety, or welfare concerns and directly relate to those concerns. These limitations curb a city's discretion but do not create a ministerial duty. As such, Petitioner's claims are governed by an abuse of discretion standard of review.

2. Abuse of Discretion

An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. In applying this deferential test, a court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." Western States Petroleum Assn v. Superior Court, (1995) 9 Cal.4th 559, 577. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

The City argues that the City Council files, which the Petition cites, demonstrate that the City identified objective health, safety, or welfare concerns in implementing the no-vending zones. The Chief Legislative Analyst's November 2017 report listed the criteria that the City should use to decide what areas are too unsafe for vendors. Although the Petition refers to all seven no-vending zones, it focuses on Hollywood Boulevard. The November 2017 report expressly listed Hollywood Boulevard as an example because of its high level of commercial activity and many visitors. RJN Ex. 1. The Ordinance also has a "whereas" clause that makes clear that vending within 500 feet of popular tourist attractions and concert and sports venues on event days impacts pedestrian, tourist, and vendor safety due to overcrowded sidewalks. RJN Ex. 3. The City's decision to establish no-vending zones was a lengthy,

comprehensive process involving multiple reports, hearing, and public comments, as is apparent from City Council files and the Petition. *See* Pet., ¶¶ 34-43. Dem. at 7.

Petitioners respond that the Petition's allegations, which must be taken as true, state that the City imposed sweeping restrictions on sidewalk vendors without even a cursory attempt to comply with the objective health, safety, or welfare requirement. The history of the Ordinance supports an inference that the Ordinance does not comply with SB-946. Opp. at 13-14. The Chief Analyst's November 2017 report, which predated SB-946, recommended no-vending zones and 500-foot exclusion areas for selected venues. Pet., ¶39. The July 2018 draft ordinance preserved these regulations without any indication that the City had considered the then-pending SB-946. Pet., ¶40. The City could not have considered the policies outlined in SB-946 because they did not exist yet. Opp. at 15.

When SB-946 passed, the City Council asked the City Attorney and Chief Analyst to draft a new ordinance that was consistent with SB-946. Pet., ¶41. When the October 2018 report did not address no-vending zones, the City Council instructed staff that the revised ordinance must include all no-vending zones previously proposed and directed the City Attorney and Chief Analyst to prepare findings for those zones based on health, safety, and welfare. Pet., ¶41. City staff never presented any such findings. Nor did they provide any meaningful analysis of no-vending zones. Nonetheless, the City Council adopted the Ordinance which included all the no-vending zones previously identified, plus two additional no-vending zones. Opp.at 14.

Petitioners argue that the November 2017 report (RJN Ex. 1) and the Ordinance (RJN Ex. 3) contain no data, documentation, or analysis of the health, safety, or welfare concerns for the specific no-vending zones, including Hollywood Boulevard. The Ordinance's "whereas" clause cannot support no-vending zones at each of the seven locations, which must be addressed individually. The Ordinance's conclusion that sidewalk vending in these venues causes pedestrians to walk in the street is a conclusion unsupported by data about (a) when and where pedestrians have encroached on the street, (b) whether sidewalk vending is the cause, and (c) whether alternatives to a vending ban have been considered. Opp. at 14-15.

The City argues that it did not need to know about SB-946 to consider health, safety, and welfare concerns. Reply at 5. The "whereas" clause need not be specific to any no-vendor zone, and nothing in section 51038 requires a "genuine and meaningful connection" as demanded by Petitioners. The judicially noticed City Council files were not received to show the truth of the facts contained in them but rather to show that the documents exist as part of the legislative file. As a result, the City's implementation of no-vending zones was not arbitrary, capricious, or entirely lacking in evidentiary support. Reply at 4-5.

The court agrees that the judicially noticed material may be relied upon to show what information was before the City Council in enacting the Ordinance. But the City fails to connect its file, or any other admissible evidence, with the requirements of SB-946. That is, the City has not shown that it imposed restrictions directly related to objective health, safety, or welfare concerns. The "whereas" clause identifies sidewalk overcrowding as the pertinent health, safety, or welfare issue, but neither it nor the November 2017 report explains why the seven no-vendor locations were chosen, what overcrowding has occurred at those locations, why the 500-foot barrier was selected, and whether sidewalk vending is directly related to the concern.[5] SB-946 precludes the City from

adopting these restrictions without meeting its criteria and the court cannot ascertain whether the City has complied without such evidence. As a result, the City has not overcome the Petition's allegations.[6]

Finally, the City argues that the court cannot grant the relief sought by Petitioners because to do so would be to substitute the court's judgment for whether no-vending zones should exist or whether the 500-foot buffer is correct. Dem. at 9-10; Reply at 6-7. The court need not address the relief sought in the Petition in a demurrer, which addresses only causes of action. The proper vehicle is a motion to strike.

E. Conclusion

The City's demurrer to the Petition is overruled. The City has 30 days to answer only.

[1] Petitioners failed to lodge a courtesy copy of their opposition in violation of the Presiding Judge's First Amended General Order Re: Mandatory Electronic Filing. The City's request judicial notice also provided only hyperlinks and failed to include courtesy copies. Counsel is admonished to provide courtesy copies in all future filings.

[2] All further statutory references are to the Government Code unless otherwise stated.

[3] Respondents request judicial notice of (1) the Chief Legislative Analyst's November 2017 report (RJN Ex. 1); (2) photographs from the public in City Council File 13-1493, dated October 17, 2018 (RJN Ex. 2); and (3) the Ordinance passed on December 6, 2018 (RJN Ex. 3). Request Nos. 1 and 3 are granted. Evid. Code §452(b), (c). The court agrees with Petitioners that this judicial notice extends only to the documents themselves and not the truth of the facts therein. RJN Opp. at 2. Request No. 2 is denied; the court cannot judicially notice documents presented to an agency by a member of the public. Dem. at 7; RJN Opp. at 2-3.

[4] For convenience, the court will refer to a city in lieu of a local authority.

[5] The court does not agree with Petitioners that the City must consider alternatives to restricting sidewalk vending.

[6] The City also argues that Petition's contention that the no-vending zones were implemented due to community animus is unsupported by any factual allegations. Nor does it make sense. The City grappled with the issues of balancing the interest of local businesses and sidewalk vending four years before SB-946. While the City Council files reflect early consideration of requiring permission from adjacent business and property owners, the City abandoned such a requirement after SB 946, as the Petition admits. Pet., ¶41. Dem. at 8.

The City adds that the Petition notes that the City instituted an Al Fresco program that authorizes restaurants and bars to serve customers in outdoor dining areas on the sidewalks adjoining their premises. Pet., ¶54. The Petition argues that this program undercuts the idea that the Ordinance's no-vending zones combat a legitimate concern of sidewalk overcrowding or congestion. Pet., ¶¶ 53, 55. It also suggests that the 500-foot buffer around the no-vending zones serves to protect brick-and-mortar locations in the area. Pet., ¶49.

The City rebuts the Petition's suggestion that the Al Fresco program is evidence of economic competition bias. In 2020, the City sought to help COVID-impacted businesses through the Al Fresco program and permitted street vendors and food trucks to join restaurant businesses in the program. The two programs are also distinct: the Ordinance was passed in 2018 to decriminalize street vendors and facilitate safe sidewalk vending while the Al Fresco program was passed in 2020 in response to the pandemic. Dem. at 8-9.

Petitioners only respond that the record shows neighborhood association demands to opt out of lawful sidewalk vending and that Petitioners expect to explore the impact of local merchants' expression of animus on the final Ordinance in future proceedings of this action. Opp. at 11, n.1. The court agrees with the City that nothing in the Petition supports a conclusion that the no-vending zones were implemented as a result of local business animus.
