SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Move Eden Housing et al Plaintiff/Petitioner(s) vs. City of Livermore et al Defendant/Respondent (s)	No. 22CV015399 Date: 11/15/2024 Time: 10:17 AM Dept: 23 Judge: Michael Markman ORDER re: Ruling on Submitted Matter

The Court, having taken the matter under submission on 08/22/2024, now rules as follows:

The Motion for Order Petitioners Move Eden Housing, Richard Ryon, and Thomas Ramos' Motion for Order Compelling Compliance with Writ of Mandate filed by Richard Ryon, Move Eden Housing, Thomas Ramos on 07/29/2024 is Granted.

PROCEDURAL OVERVIEW

On June 18, 2024, this court received the remittitur following Petitioner Move Eden Housing's appeal to the Court of Appeal for the First District, Division Five. The Court of Appeal directed this court "to issue a peremptory writ of mandate ordering respondents to process the referendum petition" at issue in this case "as required by the Elections Code." On June 24, the court did so, and entered judgment. On July 29, Petitioners filed a motion for an order compelling compliance with the writ of mandate.

On August 9, Respondents City of Livermore and city clerk Marie Weber ("the City") filed a return on the writ of mandate. On August 15, Petitioners opposed the return with a motion for an order compelling compliance with the writ of mandate. On August 22, the court held a hearing concerning Respondents' compliance.

The court delayed issuing this Order concerning the parties' dispute because it thought the parties were engaged in ongoing settlement discussions and it did not want to undermine the potential settlement. Specifically, on September 18 and then again on October 14, the court signed the parties' stipulations asking to continue the deadline to file a motion for attorney's fees because the parties were engaged in settlement discussions. On November 8, however, the court received a further stipulation asking to again continue the deadline for a fee motion, but this stipulation explained "the City Respondents' position is that meaningful settlement negotiations should occur after the Court rules on the motion concerning compliance with the writ. Given the clarification in the recent stipulation, it is time to issue the Order.

ORDER

The court GRANTS Petitioner's motion for an order compelling compliance with the writ of mandate. The City complied with the writ of mandate by adopting a resolution confirming that Petitioner's referendum petition against Resolution 2022-085 had a sufficient number of valid signatures to qualify for the ballot, and by issuing a new resolution that repealed Resolution 2022-085. The City acted in violation of the writ of mandate and section 9241 of the Elections Code by replacing Resolution 2022-085 with Resolution 2024-109, which sought to ratify an Amended and Restated Disposition, Development and Loan Agreement with Eden Housing.

DISCUSSION

Petitioner contends that the writ gives Respondents a choice – they "must either place the full Resolution No. 2022-085 … on the ballot or repeal it in its entirety." They further contend that the Elections Code "prohibits the City from adopting a resolution 'essentially the same' as Resolution 2022-085 for a period of one year." (Reply Br. at p. 2.)

Petitioners rely on section 9241 of the Elections Code as support for their contention that the City cannot adopt "essentially the same" resolution as Resolution 2022-085 for at least a year. The statute provides:

"If the legislative body does not entirely repeal the ordinance against which the petition is filed, the legislative body shall submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the legislative body, or at a special election called for the purpose, not less than 88 days after the order of the legislative body. The ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it. If the legislative body repeals the ordinance or submits the ordinance to the voters, and a majority of the voters voting on the ordinance do not vote in favor of it, the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body or disapproval by the voters."

(Elecs. Code, § 9241.)

The City attempts to take a different approach to comply with the writ, which Petitioners argue violates section 9241. First, in order to comply with the writ, the City (a) adopted a resolution confirming that Petitioner's referendum petition against Resolution 2022-085 had a sufficient number of valid signatures to qualify for the ballot, and then (b) issued a new resolution that repealed Resolution 2022-085. The parties all agree that these steps were consistent with, and would satisfy, the writ of mandate.

Next, the City adopted a "companion resolution," which has now become the focus of the parties' dispute. The "companion resolution," Resolution 2024-109, ratified an Amended and Restated Disposition, Development and Loan Agreement ("Amended DDLA") with Eden Housing. Unlike the DDLA the City had approved in 2022 in the now-repealed Resolution 2022-085, the Amended DDLA ratified in 2024 did not include provisions relating to Veterans Park.

From the City's perspective, it complied with the writ of mandate by unequivocally repealing Resolution 2022-085. Since Resolution 2024-109 is different from Resolution 2022-085 – omitting the Veterans Park provisions – it is not the "same action" as Resolution 2022-085 for purposes of section 9241 of the Elections Code. From Petitioner's perspective, the new resolution 2024-109 violates the spirit of the writ of mandate and violates the letter of section 9241.

Petitioners argue that the City "takes an inappropriately narrow view of the writ," because the writ "compels the City to comply with the Elections Code in processing Resolution 2022-085." (Reply Br. at p. 3.) The new resolution 2024-109 approves the Amended DDLA, which is the same as the DDLA approved back in 2022 "in every way but for the park-related provisions," "including "word-for-word the identical description of the 130-unit housing development, except for construction and improvements to the park." (Reply Br. at pp. 3-4.) In other words, the new resolution 2024-109 approves the same project as Resolution 2022-085.

The City argues that the elimination of the park provisions from the DDLA make Resolution 2024-109 materially different from Resolution 2022-085, and so the City's adoption of the new resolution did not violate the writ or section 9241. The City points to the references in the Court of Appeal's opinion to the Veterans Park improvements as the reason why the original 2022 resolution was a legislative act rather than an administrative one under San Bruno Committee for Economic Justice v. City of San Bruno (2017) 15 Cal.App.5th 524, 530, which was the reason the Court of Appeal found the City had failed to make a "'compelling showing' that the proposed referendum 'should not be submitted to the voters.'" (Slip Op. at 12, citing Save Lafayette v. City of Lafayette (2018) 20 Cal.App.5th 657, 663-664.) Specifically, heading III of the Court of Appeal's opinion reads, "Due to The Policy Decision to Construct and Improve Veteran's Park, Adoption of The Resolution Was a Legislative Act." (Slip op. at p. 12.) The Court of Appeal wrote, "The 2022 Agreement, for the first time, authorizes the construction of and improvements to Veteran's Park." (Id. at p. 14.) It later continued, "the record demonstrates that the Resolution approving the 2022 Agreement was the initial relevant policy determination regarding the park's construction and improvements. Contrary to respondents' suggestion, with respect to the park, the Resolution did not involve merely the City's determination to appropriate specific amounts of public funds for a plan that had already been adopted." (Ibid.)

Compliance with the writ and the Elections Code turns on the court's construction of section 9241, which is a question of law. ""'In construing a statute, our task is to ascertain the intent of

the Legislature so as to effectuate the purpose of the enactment.'" (Adolph v. Uber Technologies, Inc. (2023) 14 Cal.5th 1104, 1120.) "We look first to 'the words of the statute, which are the most reliable indications of the Legislature's intent.' " (Ibid.) " 'The statute's plain meaning controls the court's interpretation unless its words are ambiguous.' " (Imperial Merchang Servs., Inc. v. Hunt (2009) 47 Cal.4th 381, 387-388.) "We decline to insert any additional restrictions into an otherwise unambiguous provision." (Rudick v. State Bd. of Optometry (2019) 41 Cal.App.5th 77, 85.) We construe the language of the statute "in its full statutory context, keeping in mind the nature and purposes of the statutory scheme as a whole." (California Med. Assn. v. Aetna Health of California Inc. (2023) 14 Cal.5th 1075, 1087; Dyna-Med, Inc. v. Fair Employment & Housing Comm. (1987) 43 Cal.3d 1379, 1386-1387.)" (People v. Shah (2023) 96 Cal.App.5th 879, 895.)

Read in the context of the whole statute, the one-year waiting period applies to Resolution 2024-109 and makes the new resolution untimely. The statute requires that the City "entirely repeal the ordinance against which the petition is filed." (Elecs. Code, § 9241, emphasis added.) If the ordinance fails to win in the referendum, then it "shall not again be enacted by the" City for a year after the "disapproval by the voters." (Ibid.)

Here, the City repealed the approval of the DDLA and then immediately replaced it with a resolution approving a virtually identical Amended DDLA. It is too clever by half to say that the City "entirely repealed" the original resolution when it immediately substituted almost all of the original language in the replacement resolution. The omission of the provisions concerning Veterans Park is certainly material, and the new resolution may be "different" in important ways, but that is not the test. The City has not entirely repealed the original resolution for purposes of section 9241, which is the central question. Absent an "entire repeal" of the resolution, the City was obligated to send Petitioners' referendum to the voters.

The court finds that the City effectively repealed only part of the original resolution. Under section 9241, the new resolution cannot be enacted for a period of a year following the repeal.

Petitioners further note that under section 9241 the City could have enacted "an ordinance essentially different from the ordinance protested against, avoiding, perhaps, the objections made to the first ordinance." (Reagan v. City of Sausalito (1964) 210 Cal.App.2d 618, 630, quoting Gilbert v. Ashley (1949) 93 Cal.App.2d 414, 415.) As noted above, however, the new 2024 resolution was substantially similar to the original one, with the exclusion of the Veterans Park provisions, and not "essentially different." The court lacks evidence suggesting that the City adopted the new resolution "with intent to evade the effect of the referendum petition," which would require that the new resolution be held invalid. (Ibid.)

The City must now comply with the writ of mandate. The original 2022 resolution has been repealed but the new 2024 resolution is premature under section 9241.

Dated : 11/15/2024

Michael Markman / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp FILED Superior Court of California County of Alameda 11/15/2024 Chad Finke, Executive Officer / Clerk of the Court By: A. Tumonong Deputy
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	
PLAINTIFF/PETITIONER: Move Eden Housing et al	
DEFENDANT/RESPONDENT: City of Livermore et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 22CV015399

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Andrew B Sabey
asabey@coxcastle.com

Homrighausen Kevin
Latham & Watkins LLP
kevin.homrighausen@lw.com

PETER PEIRCE
snguy@rwglaw.com

Winston Peter Stromberg
Latham & Watkins LLP
winston.stromberg@lw.com

Chad Finke, Executive Officer / Clerk of the Court

Dated: 11/15/2024

By:

A. Tumonong, Deputy Clerk

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6