Court of Appeal, Second Appellate District
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Court of Appeal, Second Appellate District
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2nd App. Dist. Civil No. B290637

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 3

FRIENDS OF GRIFFITH PARK; GRIFFITH J. GRIFFITH CHARITABLE TRUST, and LOS FELIZ OAKS HOMEOWNERS ASSOCIATION;

Plaintiffs, Petitioners, and Appellants

v.

CITY OF LOS ANGELES;

Defendant and Respondent

SUNSET RANCH HOLLYWOOD STABLES INC;

Defendant and Real Party in Interest.

APPELLANTS' REPLY BRIEF

Appeal from the Superior Court for the County of Los Angeles
Case No BS170298
Honorable James C. Chalfant

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I. INTRODUCTION

Attempting to distract from the straightforward issues of statutory interpretation that this appeal presents, the City engages in an Orwellian semantic game by misrepresenting the undisputed facts of this case. The City wants this Court to believe that the Appellants, a coalition of nonprofits, have spent this much energy fighting a closed park access gate that is, in fact, open. Yet the facts in this matter are undisputed, and the City's brief, put kindly, stretches the truth.

Throughout the City's brief, (*see, e.g.,* at 10), it argues the trial court ruled that the Beachwood Gate is open. Here are the trial court's own words: The city engaged in "cutting off access." The city "lock[ed] the pedestrian gate." The city decided to "close the gate." (AA Vol. 10 p. 2747.) This was a "permanent closure." *Id.* at p. 2748. The Beachwood Gate is now "closed." *Id.* at p. 2749. In fact, the court's ruling uses some form of the word "closed" at least six times.

The City also argues that departmental personnel did not affect "public ways in and through" Griffith Park (over which Charter section 594(c) gives the Board of Recreation and Park Commissioners exclusive domain), because the City charitably decided not to trap hikers inside Griffith Park in case of wildfire, allowing emergency egress. This has never been at issue in this case. This case challenges access to Griffith Park – the public's way **in** to Griffith Park, which Charter section 594(c) governs. On that point, the City has conceded that the public may not use this public way in and through Griffith Park. (Opposition at 22 – 23.) This is a rule of general application that governs the general public.

The City further mischaracterizes several trial-court determinations as "factual determinations," when they are in fact questions of law. For example, the trial court's conclusion that the General Manager of Recreation and Parks made an "operational decision" to deny access at the gate, is based on the trial judge's interpretation that the charter and municipal code provide that authority to the director. If his interpretation of law is wrong, which it is, then the final conclusion is also wrong.

The Court can decide this case by interpreting and applying the law only, and the proper standard of review is *de novo. See City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756, 789.

II. ARGUMENT

A. The Court May Properly Consider Appellant's Arguments on Appeal.

The City's claim that Appellants' arguments are new is untrue. Appellants' Complaint and Opening Brief below both presented arguments concerning the city charter and past interpretations of it. Those filings further argued that the City's decision was legislative in character and that the charter required action from the Board of Recreation and Park Commissioners before closing pedestrian access into Griffith Park. Appellants cited the operative Charter provisions (AA Vol. 1 pp. 82 – 83, Vol. 8 p. 2102.) The Court addressed the argument in its ruling at trial. (AA Vol. 10 p. 2746.) The issue was before the trial court.

Even if this were not the case, an appellate court may consider new statutory-interpretation arguments on appeal when the Court must only interpret and apply matters of law. *County of Kern v. T.C.E.F. Inc.* (2016) 246 Cal.App.4th 301, 326. "[T]he issue of whether the agency proceeded in excess of its jurisdiction is a question of law." *Citizens for a Better Eureka v. California Coastal Com.* (2011) 196 Cal.App.4th 1577, 1583. The City incorrectly claims that a new legal argument may not be pursued on appeal. (Opposition at 13.) The case the City cited, *Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 997 does not apply since it neither involved a writ proceeding nor uncontroverted facts, as we have here.

The appellate court may consider Appellants' arguments. In fact, the City grudgingly concedes this when it presents arguments on the interpretation of the charter and municipal code.

B. The Court Owes No Deference to the City In Interpreting its Charter.

Courts need not defer to cities in interpreting their charters and municipal codes. *See e.g. Woodland Park Management LLC v. City of East Palo Alto Rent Stabilization Bd.* (2010) 181 Cal.App.4th 915, 925. A court must "independently judge the text of the

statute." *Yamaha Corp of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 8. City staff's interpretation of a charter or municipal code is not entitled to deference since:

> Unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. . . . Because an interpretation is an agency's legal opinion, however 'expert,' . . . it commands a commensurably lesser degree of judicial deference. *Yamaha, supra,* 19 Cal. 4th at 12 (citations omitted).

This case turns on straightforward statutory interpretation. Such is the province of the judiciary. The Court need not defer to the City's self-serving interpretations.

Moreover, in the absence of a consistent and long-standing interpretation, a City's "undisclosed unilateral interpretation is not entitled to deference" at all. *Tower Lane Properties v. City of Los Angeles* (2014) 224 Cal.App.4th 262, 278. The City points to no evidence of any long-standing interpretation. If anything, it is just the opposite. The City did not enter into the record any examples where it didn't require a vote by the Board of Recreation and Park Commissioners when deciding public thoroughfare into a park – even if the decision merely affected the <u>hours</u> a park was open to the public.

Nor is this one of the cases where an agency has developed profound and specific technical expertise in interpreting a regulation. Whether an agency has a comparative advantage over the courts (and is entitled to deference) depends on whether an agency has "expertise and technical knowledge, as well as whether the legal text to be interpreted is "technical, obscure, complex open-ended, or entwined with issues of fact, policy and discretion." *Yamaha, supra,* 19 Cal. 4th at 12-13. Here, the City has no comparative advantage over this Court in interpreting the charter and municipal code as they are straightforward, non-technical, governing texts enacted by a legislative body.

Thus, the trial court erred in deferring to the City's interpretation of its charter and municipal code. This Court need not grant such deference.

C. The Trial Court Erred When Ruling the Closure Was Not a "Rule of General Application"

A rule of "general application" may include a rule generally applicable to all members but can also be extended to a rule applicable to all members of a class, kind or order. *Volkswagen of Am. v. Superior Court* (2001) 94 Cal.App.4th 695, 703-04. Section 506(b) of the City Charter requires that all rules of general application, whether issued by a city board or a General Manager for the department be "published once in a daily newspaper." It also requires that the Mayor of the City approve a rule, if a department's General Manager issues a rule of general application.

The closure of pedestrian access to Griffith Park from Beachwood Canyon qualifies as a rule of "general application" as it bars all members of the public from getting into Griffith Park through the Beachwood Gate. And it doesn't matter that the City allows the public to flee the park in case of emergency. That is required by other statutory provisions and common-law principles, to avoid negligence. This case has always been about public access into a park using a public right of way. Here, the City neither published this rule change nor obtained formal mayoral approval, therefore, even if the General Manager was allowed to issue it, the City has not complied with the law.

Moreover, Appellants did not waive its arguments on this issue since Appellants raised this issue in their opening brief. (Appellants' Opening Brief at 6-7) Nor was the city prejudiced since it had ample chances to reply to these arguments below and did. (Opposition at p. 38 – 39). This issue is properly before the Court and is also subject to *de novo* review.

A governmental act that affects someone's life, liberty, or rights is legislative in character and must follow the procedures required to pass such acts, no matter how "clumsy or burdensome" the government deems them to be. *See I.N.S. v. Chadha* (1983) 462 U.S. 919, 959; *County of Sonoma v. State Energy Resources Conservation etc. Com.* (1985) 40 Cal. 3d 361, 376 (applying *INS v. Chadha*). Here, the charter sets forth the procedures that must occur – whether a Board OR a General Manager promulgates a rule of general application. The trial court ignored the law when he engrafted what appears to

be a non-existent "convenience" exception to the plain language of the charter. The trial judge wrote that a Department's General Manager "must be permitted to make operational decisions . . . even those of general application." (AA Vol. 10 p. 2747 [emphasis added].)

D. The Trial Court Erred by Excluding Dispositive Evidence, Of Which This Court Can Properly Take Judicial Notice.

The City misrepresents the reason as to why the trial court excluded evidence. (Opposition at 39 – 40) The court cited no other grounds other than the failure to properly authenticate the evidence as its basis for exclusion. (AA Vol. 10 p. 2743 fn. 2.) The court's rejection of the excluded evidence was improper since the City admitted to the authenticity thereof. As the City itself noted in its objections "the pages at Exhibits A-J are accurate copies of City records" all of which are public records accessible on the City's website. (AA Vol. 10 p. 2706 – 07)

The basis for exclusion appears only to be out of spite for Appellants' counsel opting not to consult with counsel for the City prior to including the documents as part of its filing in this matter. (AA Vol. 10 p. 2706 – 07 ["The City has long requested FOG work with the City to authenticate alleged official records, FOG never participated in that request. . . . the manner FOG has conducted themselves is improper."].)[1] Appellants were not required to consult with the City prior to submitting judicially noticeable public documents in this matter, and the authenticity of the same should have never been at issue.

Regardless, Evidence Code section 452(c) allows this Court to take judicial notice of the excluded evidence – official public records of governmental agencies – and the Appellants request that the Court do so, in response to the City's arguments in its Reply brief, which appear calculated to mislead the Court. Such evidence is relevant to establish a pattern and practice of policies concerning closures of City park land being submitted to the department's Board for approval. The August 14, 2002 Report of

[1]The City Attorney chooses to erroneously refer to Appellant "Friends of Griffith Park" as "FOG."

General Manager (AA Vol. 8 p. 1969 – 70) establishes that the Department has previously interpreted the City Charter and Municipal Code to vest authority in the department's Board over park operating hours, and not to the General Manager. As the Report of the General Manager notes:

> The Board **can administratively establish earlier closing and later opening hours for any of the facilities under its control** (City Charter Section 10 *et seq.*); however without approval of the City Council by ordinances, such actions would not have the force of the law. (AA Vol. 8 p. 1970 [emphasis added].)

Similarly, the November 24, 1992 article (AA Vol. 8 p. 1999 – 2000) and City Council motion (AA Vol. 8 p. 1971 – 74) reflect the fact that the Board held administrate authority to issue directives to modify park operating hours but requires City Council approval to modify directives imposed by the City's municipal code. (AA Vol. 8 p. 2000 ["The city's Recreation and Parks Commission voted to approve the dusk-to-dawn curfew . . . 'Now we want to make it official,' Andervich said. Having the curfew sanctioned by law – not just administrative directive – makes it more legally defensible, he said."].) All of these materials demonstrate that the City has historically required action by the Board of Recreation and Park Commissioners or the City Council to take an action like the one challenged here. Such a requirement is not absurd. The City has done so at every other point in its long history.

E. The Lower Court's Interpretation of the Key Municipal Code Provision Would Render It Superfluous, and the City's Brief Impliedly Concedes These Points.

Courts interpreting statutes must take careful steps not to render them a nullity. *See, e.g.*, *City of San Jose v. Superior Court* (1993), 5 Cal.4th 47, 55; *In re Marriage of Duffy* (2001), 91 Cal.App.4th 923, 939. A court should not render any language in a statute as surplusage, much less an entire statutory provision. *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.

The trial court's interpretation of section 63.45 would render it entirely superfluous. If the charter conferred authority for departmental staff to make decisions

like the one challenged, why would a separate municipal-code provision exist, detailing the circumstances – emergencies – when staff could make such a decision?

The City effectively concedes this interpretation, because it does not rebut it. Municipal code section 63.45 must be interpreted to confer power for departmental personnel to close parkland in the event of an emergency only. The City cites authority – *Spinks v. Los Angeles* (1934) 220 Cal. 366, 368 – where the Board of Recreation and Parks Commissioners were required by an older version of charter section 594(c) to authorize the extension of a thoroughfare through the center of a city park. The City further concedes that Streets and Highways Code section 18609 defines a "public way" to include "rights of way of the public." The court in *Sunset Ranch* found that the general public had a right of way over the access road at issue here and that "members of the public (*i.e.* pedestrians / hikers) cannot be excluded from using the easement." (AA Vol. 1. p. 22.) Thus, Charter section 594(c) applies to the public right of way into the Beachwood Gate, as it involves the "[o]pening, establishment and maintenance of . . . public ways in and through" City parkland.

III. CONCLUSION

For the foregoing reasons, the Court should grant the appeal, remand to the trial court to issue a writ of mandate, and award fees and costs to appellants.

DATED: December 12, 2018 ACTIUM LLP

By: Mike Gatto
MIKE GATTO

DATED: December 12, 2018

MITCHELL M. TSAI, ATTORNEY AT LAW

By: 
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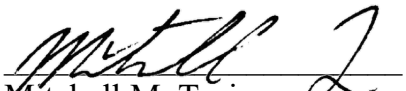
CERTIFICATE OF WORD COUNT

This appellant's opening brief is prepared in 13 point Times New Roman font ("roman" type style) and contains approximately 2411 words per computer-generated word count

Dated: December 12, 2018



Mitchell M. Tsai

PROOF OF SERVICE

I, Leon Ramsey Jr., declare as follows:

I am a resident of the State of California, and employed in Pasadena, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is: 155 South El Molino Avenue, Ste. 104, Pasadena, California 91101. On December 12, 2018, I served a copy of the foregoing document(s) entitled:

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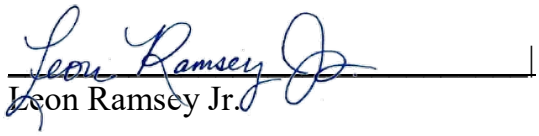

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