15-1226

May 9, 2016 REVISED MAY 10, 2016

To: The Los Angeles City Council:

From: William Kuzmin, Old Granada Hills resident since 1987

Subject: Written Public Comment CF-15226 S1, S2, and S3 Granada Hills Community Plan Ordinances. *The specific plan and the CPIO RFA and "K" district ordinances. Agenda Item number 2. Please vote no on the Old Granada Hills RFA and the Equine "K" districts for the following reasons*

The 90 day statute of limitations for City Council to act on the amendments expired on January 1, 2016 for the GHKCP for the Old Granada Hills Residential Floor Area RFA" and the equine keeping "K" district. The 90 day time period to act on the ordinances began with the City Planning Comission final Determination letter dated October 2, 2015.

The City Planning letter report dated march 2016 references the RFA as section 13.13. Section 13.13 is superseded by code Section 13.14 and 12.32S amended by the Community Plan Implementation Overlay district ordinance 181,412 effective in 2011. As zoning ordinances of a restrictive nature they must comply with all the conditions set forth in the code.

B. Establishment of the District. The procedures set forth in Section 12.32 S

12.32 C 7. **Council. (Amended by Ord. No. 173,992, Eff. 7/6/01.)** The Council may approve or disapprove an application or initiated proposed land use ordinance. It shall approve an ordinance only after making findings that its action is consistent with the General Plan and is in conformity with public necessity, convenience, general welfare and good zoning practice. If the Planning Commission recommends approval of an application, then the Council shall act within 90 days of receipt of the Planning Commission recommendation. The 90 day time limit to act on a Planning Commission approval of an application may be extended by mutual consent of the applicant and the Council.

The petition filed September the 16, 2015 against the city for failure to notify the homeowners of the NCICO was dismissed because the court upheld that the ICO was a zoning ordinance and subject to the 90 day

statute of limitations for filing. The Courts tentative ruling is attached. (90 days is 90 days and if the City Passes these ordinance the court will overturn them just like my petition against the ICO).

Thus the Equine keeping "K" district and the Old Granada Hills Residential Floor Area district are Community Plan Implementation Overlay (CPIO) zoning ordinances.. They must each have an independent Environmental Impact Report. There must be a separate City Planning Commission meeting for each one. The reason is that any notification included in the procession of the Granada Hills Knollwood Community Plan must be deemed insufficient to fulfill the condition of notice to the homeowners (see mailed notice map vs pubic hearing map).

They must each have public written notice of a public hearing and provide public workshops (Michael LoGrande Dec. 7, 2010 "Myths about the CPIO" addressed to the community stakeholders)

Dear Community Stakeholders:

The Planning Department recently initiated a long-term effort to amend and improve the City's 64 year old Zoning Code. Hundreds of amendments over the years have created a very large document filled with cross referencing, contradictions, and antiquated language. Our goal is to make the Code more easily understandable, while offering innovative planning tools.

The first two revisions are the Community Plan Implementation Overlay (CPIO) ordinance, which allows for tailored regulations to target neighborhood character within individual Community Plans and the Core Findings ordinance, which consolidates and standardizes many required findings for discretionary approvals. These ordinances will foster better planning by improving project predictability, demystifying code language, and providing additional neighborhood protections.

In light of specific concerns regarding these two ordinances, the Planning Department has prepared a fact sheet "Myths and Facts about the Planning Department's Recent Initiatives" to clarify misconceptions about what these ordinances will and won't do.

"**MYTH #1: The ordinances will give the Planning Department free reign and short-cut the public process.**

FACT:

The Code reform efforts underway will make land use processes more transparent and easier for the public to participate. None of the Code Amendments would present an opportunity to shortcut the

required public process. For example, future Community Plan Implementation Overlay districts must each be developed with substantial community input through a public process involving multiple public workshops and hearings.

MYTH #7: Community Plan Implementation Overlay districts will roll over existing regulations in
Community Plans and will be adopted in lieu of new or updated Community Plans.

Appeal closed (CPC determination letter dated Oct. 2, 2015). The city failed to pass the Equine "K" district and the Old Granada Hills RFA district within 75 days per the municipal code 13.14. There was no extention of time by the applicant or the City Council. The "applicant" or "initiator" does not exist and time period to act was not extended. Code 12.32 7-D-3

Denies both application or initiated land use ordinance.

CPC approved RFA draft from City Council per the DCP statement on May 23, 2013

The DCP told the Planning and Land Use Management Committee the request for the OGH RFA came from the community – THIS WAS A FALSE STATEMENT – per the BMO and CPIO an application for a RFA district from an individual or group must have 75% of the owners or lessees" and the DCP did not present these signatures. I am submitting today over 300 petitions signatures of affected homeowners within the boundaries against the Old Granada Hills down zoning in the community plan (not noticed or public hearing within 500 ft or the owners) and opposing the Old Granada Hills CPIO Residential Floor Area (RFA) District.

MYTH #6: Projects will be able to be built without an Environmental Impact Report (EIR).

FACT:

All discretionary actions must comply with the California Environmental Quality Act (CEQA). None of the proposed initiatives will override CEQA. As is the current practice, EIRs will still be required on significant projects exceeding certain environmental thresholds. Similar to Specific Plans and other types of Overlay Districts in the Los Angeles Municipal Code, the requirements of a CPIO District will be IN ADDITION to the regulations of the underlying residential, commercial, or industrial zone. The California Environmental Quality Act thresholds used in determining the appropriate level of environmental review (i.e. Negative Declaration, Mitigated Negative Declaration, or EIR) will be unchanged. Projects in overlay districts actually receive increased environmental review as compared to by-right projects reviewed

solely by the Department of Building and Safety. All projects within future CPIO districts will be subject to California Environmental Quality Act requirements and the City's adopted thresholds of significance. None of the proposed ordinances could directly or indirectly weaken the level of environmental review.

SEC. 13.13. "RFA" RESIDENTIAL FLOOR AREA DISTRICT.
(Added by Ord. No. 179,883, Eff. 6/29/08.)

Sec. 17. The list contained in Paragraph (b) of Subdivision 1 of Subsection S of Section 12.32 of the Los Angeles Municipal Code is amended by adding a new entry to read "RFA" Residential Floor Area District at the end of the list.

Sec. 18. Subparagraph (2) of Paragraph (c) of Subdivision 1 of Subsection S of Section 12.32 of the Los Angeles Municipal Code is amended to read:

(2) Additional Requirements for Application. One or more of the owners or lessees of property within the boundaries of the proposed district may submit a verified application for the establishment of a district. An application for the establishment of a Residential Floor Area District shall contain the signatures of at least 75 percent of the owners or lessees of property within the proposed district.

B. Establishment of the District. The procedures set forth in Section 12.32 S of this Code shall be followed,

12.32 S. Supplemental Use Districts. (Amended by Ord. No. 181,412, Eff. 1/2/11.)

1. **Purpose.** The purpose of Article 3 of this chapter is to regulate and restrict the location of certain types of uses whose requirements are difficult to anticipate and cannot adequately be provided for in the "Comprehensive Zoning Plan". These uses, the boundaries of the districts where they are permitted, the limitations governing their operations, and the procedure for the establishment of new districts, are provided for in Article 3 of this chapter. Except for the "Supplemental Uses" permitted by Article 3 of this chapter, all property within the districts hereby established is subject to the provisions of the "Comprehensive Zoning Plan".

2. **Districts. (Amended by Ord. No. 183,145, Eff. 8/20/14.)** In order to carry out the provisions of this article, the following districts are established:

"O" Oil Drilling District
"S" Animal Slaughtering District
"G" Surface Mining District
"RPD" Residential Planning Development District
"K" Equinekeeping District
"CA" Commercial and Artcraft District
"POD" Pedestrian Oriented District
"CDO" Community Design Overlay District
"MU" Mixed Use District
"FH" Fence Height District
"SN" Sign District
"RFA" Residential Floor Area District
"NSO" Neighborhood Stabilization Overlay District
"CPIO" Community Plan Implementation Overlay District
"HS" Hillside Standards Overlay District
"MPR" Modified Parking Requirement District
"RIO" River Improvement Overlay District

These districts and their boundaries are shown on portions of the "Zoning Map" as provided for in Section 12.04 and made a part thereof by a combination of the zone and district symbols. This map and the notations, references and other information shown on it which pertain to the boundaries of these districts are made a part of this article as if fully described here. Reference is hereby made to those maps, notations, references and other information for full particulars.

3. **Establishment of Districts.**

(a) **Requirements.** The procedure for initiation or an application to establish, change the boundaries of or repeal a supplemental use district shall be as set forth in this section with the following additional requirements.

(b) **Additional Requirements for Application. (Amended by Ord. No. 183,145, Eff. 8/20/14.)** Except for CPIO Districts, which may not be established through the application procedure, one or more of the owners or lessees of property within the boundaries of the proposed district may submit a verified application for the establishment of a district. An application for the establishment of a Commercial and Artcraft District, a Pedestrian Oriented District, an Equinekeeping District, a Community Design Overlay District, a Mixed Use District, a Sign District, a Residential Floor Area District, a Neighborhood Stabilization Overlay District, a Hillside Standards Overlay District, a Modified Parking Requirement District, or a River Improvement Overlay District shall contain the signatures of at least 75 percent of the owners or lessees of property within the proposed district. An application for the establishment of a Fence Height District shall contain the signatures of at least 50 percent of the owners or lessees of property within the proposed district. An application shall be accompanied by any information deemed necessary by the Department.

If establishment of a district is initiated by the City Council, City Planning Commission or Director of Planning, the signatures of the property owners or lessees shall not be required.

(c) **Action on the Initiation or Application.**

(1) **Authority.** Notwithstanding the provisions of Subsection C., only the City Planning Commission is *authorized to make recommendations regarding approval or disapproval in whole or in part on an* application for or the initiation of the establishment of a supplemental use district to the Council.

(2) **Notice.** Notice of the public hearing shall also be given to the Bureau of Engineering and Department of Transportation for an application or initiation to establish a supplemental use district.

(3) **Time for Commission to Act on Application. (Amended by Ord. No. 183,145, Eff. 8/20/14.)** The City Planning Commission shall act on an application to establish an "O", "S", "G", "K", "CA", "POD", "CDO", "MU", "FH", "SN", "RFA", "NSO", "CPIO", "HS", "MPR", or "RIO" District within 75 days from the date of the filing of the application. The City Planning Commission shall act on an application to establish an "RPD" District within 75 days from receipt of the Subdivision Committee report and recommendation. The City Planning Commission shall act on proceedings initiated by the Council within 75 days of receipt of that action from the Council, or within the time that the Council may otherwise specify.

SEC. 13.14. "CPIO" COMMUNITY PLAN IMPLEMENTATION OVERLAY DISTRICT.

(Added by Ord. No. 181,412, Eff. 1/2/11.)

B. **Relationship to Other Zoning Regulations.** Where the provisions of a CPIO District conflict with those of a Specific Plan or Historic Preservation Overlay Zone (HPOZ), then the provisions of the Specific Plan or HPOZ shall prevail. Regulations contained in the CPIO District dealing with uses, height, floor area ratio, and/or signage shall be more restrictive than applicable regulations in the underlying zone(s) and other supplemental use districts. If the provisions of the CPIO conflict with any other City-wide regulations in the Los Angeles Municipal Code or supplemental use districts other than a Specific Plan or HPOZ, then the requirements of the CPIO District shall prevail.

C. **Establishment of the District.**

1. **Initiation.** The initiation of the establishment of a CPIO District or a change in boundaries of a district shall follow the procedures set forth in Section 12.32 of this Code.

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William E. Kuzmin v. City of Los Angeles, et al., BS 157882

Tentative decision on demurrer: sustained without leave

Respondent City of Los Angeles ("City") demurs generally to the Petition for Writ of Mandate filed by Petitioner William E. Kuzmin ("Kuzmin").

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

A. Statement of the Case

Petitioner Kuzmin has been a homeowner in the Old Granada Hills ("OGH") area for 28 years. Pet. at 2. He owns a 1,296 square foot two-bedroom home built in 1927 situated on 12,600 square feet of land. Id. On July 2, 2015 Kuzmin met with the City Planner to apply for a lot split or zone change to erect a second home and/or add to the existing home. Id.

The application could not be processed because of the Neighborhood Conservation Interim Control Ordinance ("NCICO") currently in effect. Id. The NCICO restricts OGH homeowners to a 20% increase in the total square footage of their existing home structure. Id. This limits Kuzmin to a maximum addition of 260 square feet resulting in a maximum building size of 1,456 square feet. The NCICO additionally prevents the possibility of a second garage addition compared to the current Baseline Mansionization Ordinance ("BMO"), which would allow a total 6,000 square feet of living area. Id. Ex. B.

A family's home is usually their largest financial investment and should not be unfairly restricted. Pet. at 2. The average estimated single-family residence price per square foot is $344 in OGH based on Multiple Listing Service ("MLS") data for the last 365 days. Id. The estimated loss of value from the NCICO restriction affecting the highest and best use is a $767,936 loss in economic value. Id. The passage of the NCICO constitutes the taking of Kuzmin's real property in violation of the Fifth Amendment, as just compensation was not given. Pet. at 2-3.

The City violated the Brown Act (Government Code section 54950 *et seq.)*, in a rush to conclude there is a current out of control mansionization problem in OGH. Pet. at 3. This is indicated by the erroneous data in the February 20, 2015 Los Angeles Department of City Planning's ("Planning Department") revised Categorical Exemptions and related California Environmental Quality Act ("CEQA") findings and previous reports from the Planning Department and the City Attorney on the then proposed NCICO. Pet. at 3, Ex. D. The OGH new permit and demolition data in the Planning Department CEQA findings report indicates the conclusions to justify an emergency Interim Control Ordinance ("ICO") are erroneous and/or false. Id. The Planning Department has no substantial evidence to support the conclusion that the OGH character is threatened by the demolition of existing homes or a proliferation of two-story boxlike structures. Id. There are no findings of an immediate threat to the public's general welfare in OGH. Id. There are no findings to conclude that OGH is an affluent community. Id.

The City failed to comply with conditions set forth in Government Code section 65858. Pet. at 4. Councilman Mitch Englander did not provide the Planning Department any substantial evidence of a current or future trend of large hulking two-story boxlike structures that are an immediate threat to the public's general health, safety, or welfare in the OGH Area. Id. Planning

Department correspondence reveals no data was submitted to support the Government Code section 65858 conditions for a new ICO. Pet. at 4, Ex. E. Emails were sent by Kuzmin to the City Council District 12 Chief Planner, Hanna Lee and the Planning Department requesting data submitted to the Planning Department identifying the existence of a current mansionization problem as justification to include OGH in the NCICO. Pet. at 4, Ex. F. There was no response from Ms. Lee and no supporting data was sent to Kuzmin. The Planning Department report dated October 1, 2014 lists only five communities to be included in the NCICO. Pet. at 4, Ex. G. The Planning Department CPRA report lists a demolition ratio between the project area and the city at large. Pet. at 4, Ex. D. The table is false when applied to OGH. Id. There are no demolition permits for existing single family homes in OGH contained in the raw data. Id.

The inclusion of OGH in the NCICO was never posted as an agenda item by the City Council Planning and Planning and Land Management Committee ("PLUM") which is a violation of agenda item description requirements of the Brown Act. Pet. at 5-6. At the October 21, 2014 PLUM meeting the submission of four more communities including OGH were added to the consent calendar for inclusion in the NCICO. Pet. at 6, Ex. 1. This was a significant change to the consent agenda items and the PLUM committee did not allow public comment on the addition of the OGH to the NCICO after the change to the consent calendar. Pet. at 6. The OGH was included by City Councilman Mitch Englander's hostile amendment into the NCICO motions scheduled on the consent calendar at the October 21, 2015 PLUM meeting. Pet. at 8, Ex. 1. The NCICO agenda items were identified as "continued" because the PLUM committee did not have a quorum when the proposed NCICO public comment was first heard at the October 7, 2014, PLUM committee meeting. Id. Failure to take public comment at the October 21, 2014 PLUM meeting was a Brown Act violation and a violation of the City Council rules. Pet. at 8.

Per Government Code section 65858 (c) a procedural violation occurred when the Planning Department did not comply with the condition to submit legislative findings or factual evidence to substantiate the description that residents of OGH are experiencing: "a proliferation of large two-story boxlike structures posing an immediate current threat to the public health, safety and welfare." Pet. at 9.

Further, including OGH in the NCICO was a violation of Government Code section 65858(3)(1)(f) because all allowable ICO extensions have expired. Pet. at 10, Ex. L. The underlying project is the OGH Residential Floor Area ("RFA") overlay district included in the proposed Knollwood/Granada Hills Community Plan. Pet. at 10. The first initiation of the mansionization supplemental use overlay district was in 2004. Id. In 2006 a second ICO was created while the plan was updated to include the overlay district in the proposed community plan and extended in 2007. Id. In 2008 the BMO was passed but the OGH RFA overlay district was not removed. Id.

The City and the Planning Department did not meet the requirements of Los Angeles Municipal Code ("LAMC") section 12.32, which sets forth the public notice requirements for zoning project changes. Pet. at 11. The residential property owners have not been informed or afforded the opportunity for public input on the specific OGH RFA district and zone changes. Id. The previous community input is outdated and erroneous as approximately 66 percent of the properties in the OGH area have changed owners since 2002 when the plan was first formulated. Id. Any community input received previously by the Planning Department is not reflective of the current owners, who have not been notified of the proposed OGH RFA restrictions included in the

proposed community plan. Id.

There is a 90-day limit in the LAMC for zoning changes. Pet. at 12. The active initiation date is May 23, 2013, when the City Planning Commission recommended approval of the plan without a final Environmental Impact Report (EIR) for submission to the PLUM committee of the City Council. Pet. at 13. The time period for ratification has expired and has not been extended by official action. Id. The OGH RFA district was not ratified within the 90 day time period. Id. Therefore, the initiation of the OGH RFA district is null and void and must be removed from the proposed new Granada Hills Community Plan. Id.

Kuzmin seeks a writ of mandate commanding Respondents to rescind all approvals issued in support of the NCICO and enjoin Respondents from taking any action to implement any RFA overlay district. Pet. at 15-16.

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 ("uncertain" includes ambiguous and unintelligible); (g) In an action founded upon 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 §411.35 or (i) by §411.36. CCP §430.10. Accordingly, 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); 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, (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. Nevertheless, 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, (1995) 36 Cal.App.4th 698, 709.

C. Analysis[1]

Respondent City asserts that Kuzmin's Petition is barred by the statute of limitations in Government Code[2] section 65009(c)(1)(B), which provides that facial challenges to zoning ordinances must be brought within 90 days of the ordinance's enactment.[3] The NCICO was adopted on March 25, 2015, and subsequently extended on April 29, 2015. RJN Ex. A. The Petition was filed on September 16, 2015, more than 90 days after both the enactment and the extension.

City contends that the Petition is a facial challenge to the NCICO because Kuzmin seeks rescission of the NCICO, alleging that its passage violated the Fifth Amendment, the Brown Act, and the LAMC. Pet. at 2, 6, 8. The Petition alleges that the NCICO cannot be enforced at all, and does not contend that it is unlawful only as applied to Kuzmin. Pet. at 15. Kuzmin does not disagree with the City's characterization of his Petition as a facial challenge to the NCICO.

Section 65009(c)(1)(B) sets a short, 90-day limitations period for filing and serving a petition challenging "the decision of a legislative body to adopt or amend a zoning ordinance." Honig v. San Francisco Planning Dept., ("Honig") (2005) 127 Cal.App.4th 520, 526 (90-day statute of limitations applied to "a writ petition challenging issuance of a building permit issued in conjunction with a zoning variance, if the gravamen of the petition is that the *variance* was improperly granted.") (emphasis in original); Travis v. County of Santa Cruz, (2004) 33 Cal.4th 757, 767. Section 65009(a)(3) expressly provides, in part: "(3) The purpose of this section is to provide certainty for property owners and local governments regarding decisions made pursuant to this division." The legislative intent for this provision "is to establish a short limitations period in order to give governmental zoning decisions certainty, permitting them to take effect quickly and giving property owners the necessary confidence to proceed with approved projects." Wagner v. City of South Pasadena, (2000) 78 Cal.App.4th 943, 948-49. Strict compliance with the limitations period is required. Id., at 950; *see* §65009(e).

Kuzmin argues that the NCICO is not a zoning ordinance subject to section 65009(c)(1)(B)'s limitation. Under section 65858, a legislative body may adopt an ICO without following the procedures otherwise required for adoption of a zoning ordinance. An ICO is an urgency measure prohibiting "any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time." §65858(a). Kuzmin distinguishes between zoning and planning, which is broader in concept, and argues that

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[1] City asks the court to judicially notice the NCICO, BMO, and CPIO. The requests are granted. Evid. Code §452(b).

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

[3] City further claims that, to the extent the Petition states a claim under the Brown Act, such claims are barred because the Petition does not contain a declaration that Petitioner made a demand under Gov't Code section 54960.1. Kuzmin does not provide any argument in opposition to this issue, and the demurrer is sustained as to the Brown Act claims.

an ICO is an exercise of a local agency's police power for planning, not a zoning ordinance subject to section 65009(c)(1)(B)'s short statute of limitations. Opp. at 3.

Application of a statute of limitations depends on the gravamen of the cause of action. Honig, *supra*, 127 Cal.App 4th at 524; Hensler v. City of Glendale, (1994) 8 Cal.4th 1, 22. The Planning and Zoning Law (§6500 *et seq.*) establishes the authority of local agencies to regulate the use of land. Gonzalez v. County of Tulare, (1998) 65 Cal.App.4th 777, 784. A zoning ordinance regulates the geographic allocation and allowed uses of land. Id. An ICO issued pursuant to section 65858 is a zoning ordinance regulating land use that is authorized by the Planning and Zoning Law. Its purpose is to allow a local legislative body to adopt an interim urgency zoning ordinance prohibiting land uses that may be in conflicted with a land use measure proposal which the legislative body is studying or intends to study within a reasonable time. 216 Sutter Bay Associates v. County of Sutter, ("216 Sutter Bay") (1997) 58 Cal.App.4th 860, 869. The gravamen of the Petition is not a challenge to City's planning process; it is a challenge to the NCICO's interim restrictions on land use. Since the gravamen of Kuzmin's Petition is a facial challenge to the NCICO's restrictions on land use, it is a challenge to a zoning ordinance governed by the 90-day limitations period in section 65009.

California courts consider an ICO under section 65858 a zoning ordinance. In Bank of the Orient v. Town of Tiburon, (1990) 220 Cal.App.3d 992, the court held that section 65858 occupied the field of "zoning moratoria", and therefore prevented a city from independently imposing a zoning moratorium ordinance. Id. at 1005. In 216 Sutter Bay, the court differentiated between an "interim urgency zoning ordinance" under section 65858 and an "ordinary urgency ordinance" issued under section 25123 and seeking the "immediate preservation of the public peace, health, or safety". 58 Cal.App.4th at 869, 873. The purpose of section 65009 – providing certainty for property owners and local governments regarding zoning decisions through a short limitations period --- would not be satisfied if an ICO's restrictions on land use were not subject to a 90 day statute of limitations. An ICO under section 65858 is exactly the sort of land use decision for which any challenge to an ICO should be resolved as quickly as possible to ensure certainty.

None of the cases cited by Kuzmin support a conclusion that an ICO is not a zoning ordinance. In Building Industry Legal Defense Foundation v. Superior Court, (199) 72 Cal.App.4th 1410, the issue was whether a city could use an ICO to prohibit the formal processing of a development permit, which the court answered in the negative because zoning laws determine permitted uses. Id. at 1415, 1420. The court did not discuss whether an ICO is issued pursuant to zoning law or police power. Similarly, O'Loane v. O'Rourke (1965) 231 Cal.App.2d 774 dealt with the issue of whether a city's general plan was legislative in character and subject to the referendum power. Id. at 779. Again, the court did not discuss whether an ICO was a zoning ordinance. Kuzmin has shown no support for his claim that an ICO is a police power ordinance not subject to section 65009.

Kuzmin argues that the legislative history of section 65858 demonstrates that ICOs are not zoning ordinances. Former section 65806 used the phrase "temporary zoning ordinance" which was replaced with current section 65858's phrase "interim ordinance". *See* Anderson v. City Council of City of Pleasant Hill, (1964) 229 Cal.App.2d 79, 92-93. Under the rules of statutory interpretation, a material change or amendment in the language of a statute infers an intent to change the law. In re Marriage of Duffy, (2001) 91 Cal.App.4th 923. Kuzmin therefore asserts that the change in statutory language indicated a legislative intent that an ICO is not a zoning

ordinance. Opp. at 4-5.

As City points out (Reply at 3), section 65858 provides that an ICO may be adopted "[w]ithout following the procedures otherwise required prior to the adoption of a zoning ordinance." §65858(a) (emphasis added). In providing an exception to the general procedure, the statute demonstrates that an ICO is a subset of the general category of "zoning ordinance." If, as Kuzmin claims, an ICO is not a zoning ordinance, there would be no need to distinguish the general procedure for adopting one. Similarly, Kuzmin's arguments that (a) an ICO cannot be a zoning ordinance because section 65854 mandates that a zoning ordinance be referred to a city's planning commission before approved by a city council, and (b) the City Charter requires that the Planning Commission review and recommend a zoning ordinance lack merit in light of section 65858(a)'s express exception to the procedure otherwise required for adoption of a zoning ordinance. *See* Opp. at 6-7.

The Petition is outside the statute of limitations provided by section 65009, and is time-barred.

D. Conclusion

City's demurrer to the Petition is sustained without leave to amend. An OSC re: dismissal is set for May 17, 2016 at 1:30 p.m.