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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

MILPITAS MILLS LIMITED
PARTNERSHIP,

Plaintiff and Appellant,

v.

CITY OF MILPITAS et al.,

Defendants and Respondents.

H036108
(Santa Clara County
Super. Ct. No. CV119458)

In 1993, the City of Milpitas (the City) approved a redevelopment project, which included the construction of a large shopping mall. Some eight years later, two noncontiguous parcels of land adjacent to nearby freeways were added to the project site to allow for freeway signage advertising the shopping mall—otherwise prohibited by law in those locations. After the land addition, in 2001, the mall, aptly named Great Mall, entered into a sign lease with the City concerning one of the added parcels located at Interstate 880 and Montague Expressway. Great Mall then, in turn, negotiated leases with two of its tenants. These leases included the rights of the tenants to be represented on the freeway sign at that location.

In 2006, the City approved a revision of its redevelopment projects. The revisions merged two existing redevelopment project sites, including the Great Mall project site, into a single, mostly contiguous one. Included in the ordinances to effect the revisions was a legal “framework” that the City claimed would allow all businesses in the merged

project area to present bids to advertise on the freeway signage. The City then terminated its sign lease with Great Mall, according to its terms, and issued a request for proposals that allowed any of the businesses within the merged project area to submit bids to construct and maintain freeway signage advertising their businesses. The request for proposals did not require bidders to include Great Mall on the proposed freeway signage at the Interstate 880 and Montague Expressway location.

Milpitas Mills Limited Partnership, which is the owner of Great Mall (and which we will refer to as Great Mall), sued the City and Milpitas Redevelopment Agency (sometimes collectively, Milpitas) for a permanent injunction to protect the asserted right of Great Mall, and derivatively that of its tenants, to continued representation on the freeway signage. Milpitas moved for summary judgment on the basis that Great Mall “had no right to perpetual representation” on the freeway sign. The trial court granted summary judgment in favor of Milpitas.

Great Mall contends on appeal that summary judgment in Milpitas’s favor was error because the public policy behind Ordinance No. 192.13,¹ which added the non-contiguous site at Interstate 880 and Montague Expressway to the Great Mall Project Area, specifically required Great Mall and its tenants to be represented on the freeway sign at that location and granted a right to that representation. Great Mall contends that Milpitas violated Ordinance .13 and the established public policy behind it by terminating the Sign Lease and issuing a request for proposals for new signage that did not require bidders to provide for Great Mall or its tenants to be represented on the new sign at that location.

We do not interpret Ordinance .13 to have required Milpitas to ensure that Great Mall and its tenants be represented on the freeway sign or to have entitled Great Mall to that representation. What is more, even if such a duty and corresponding right had been

¹ For ease of reference, we will refer to this ordinance as Ordinance .13.

created by Ordinance .13, it was eliminated by the later-adopted Ordinance No. 192.19,² which expressly allowed for new freeway signage at the same location to represent any businesses and civic organizations within the newly merged Project Area.

Great Mall's complaint for injunctive relief was accordingly shown, as a matter of law, to lack merit. The trial court therefore properly granted Milpitas's motion for summary judgment, and we affirm.

I. *Factual Background*

On July 20, 1993, the Milpitas Redevelopment Agency entered into an owner participation agreement with Ford Motor Land Development Corporation for development of the "Great Mall Project," which primarily consisted of a commercial and retail shopping center. The project site involved land located within Milpitas city limits owned by Ford Motor Company and formerly used by Ford as a manufacturing plant.

On November 2, 1993, the Milpitas City Council (City Council) approved the Great Mall Redevelopment Plan for the Great Mall Redevelopment Project through its adoption of Ordinance No. 192.8. The matters addressed in this ordinance included the City's necessary findings that the "Project Area is a blighted area" and that the Redevelopment Plan would promote the public peace, health, safety, and welfare in the City through redevelopment under the Community Redevelopment Law, Health & Safety Code section 33000 et seq. The City Council further expressed its intent that one of the goals of the project was to "[s]trengthen retail and other commercial functions in the Project Area."

After the redevelopment plan for the Great Mall Redevelopment Project was adopted and then amended in 1994, the Milpitas Redevelopment Agency prepared and submitted to the City certain additional proposed amendments to the Plan in 2001. The proposed amendments added two non-contiguous parcels (Added Areas) to the

² For ease of reference, we will refer to this ordinance as Ordinance .19.

previously existing Project Area. Each of these parcels was adjacent to a nearby freeway, one on Interstate 880 owned by the City, and one on Interstate 680 owned by a private party. The stated purpose of the proposed amendments was to “add the Added Areas to the Project Area, because the City Council and the [Redevelopment] Agency have determined that the improvements to be maintained on the Added Areas are of direct benefit to the alleviation of blighting conditions within the Project Area and, consequently, that the Added Areas should be made part of, and subject to the controls of the Redevelopment Plan.”

On October 16, 2001, the City Council adopted the redevelopment plan amendments concerning the Added Areas through passage of Ordinance .13, which incorporated and adopted the Plan amendments themselves. The express purpose of the Ordinance was to enable the “use of the Added Areas for the placement and maintenance of freeway signs for the Great Mall of the Bay Area, the major commercial redevelopment project within the Project Area,” seen as “critical to the viability of this project and the continued elimination of blight”³ This viability “could not reasonably be expected to be accomplished by private enterprise acting alone without the aid and assistance of the [Redevelopment] Agency (in the form of assisting and securing the necessary approvals from Caltrans for the placement and maintenance on the Added Areas of the freeway signs for the Great Mall of the Bay Area)” The City Council’s

³ Under the Outdoor Advertising Act, signs are generally not allowed along landscaped freeways to advertise businesses on other premises. (Bus. & Prof. Code §§ 5272, 5274, 5440, 5405.) If the property on which the sign is located is part of a redevelopment area, however, then such “off-site” signs may be permitted during a 10-year period and any extension thereof. (Bus. & Prof. Code § 5273.) The sections of Interstates 880 and 680 that comprise the Added Areas are, according to Milpitas, classified by the California Department of Transportation (Caltrans) as landscaped freeways and are thus subject to the Outdoor Advertising Act. This means that for “off-site” signage to be located there, the Added Areas must be designated as part of the Redevelopment Area in which the advertised businesses are located. This designation was accomplished by Ordinance .13.

factual findings in support of its adoption of the Ordinance included: (1) that “without the necessary freeway signs made possible by the Plan Amendment, the continued viability of this central project to eliminate blight in the Project Area will be seriously jeopardized;” and (2) the amendment providing for freeway signage “is therefore necessary to the continued effective redevelopment of the Project Area and the achievement of the goals, objectives and purposes of the Plan and the Redevelopment Law of the Project Area.”

In December 2001, Great Mall and the City entered into a sign lease, under which Great Mall was permitted to erect, maintain, place, and install a double-sided pylon sign on the 781 square feet of vacant land comprising the Added Area owned by the City located at Interstate 880 and Montague Expressway.⁴ The lease term began on March 1, 2000, and ended on November 2, 2008, unless terminated earlier with six months notice under section 1.04 of the lease. Under the lease, Great Mall was required to obtain an Outdoor Advertising Permit from Caltrans and a conditional use permit from the City before erecting, maintaining, placing, or installing a pylon sign on the leased premises.

After entering the Sign Lease, Great Mall entered into leases with two tenants, Century Theaters and Dave & Busters, to occupy spaces within the Great Mall shopping center. According to Great Mall, it relied on its interpretation of Ordinance .13, under which Great Mall and its tenants had a right to be represented on the freeway sign, in drafting and executing these tenant leases. Both leases included specific provisions granting rights to the tenants to representation on the sign at Interstate 880 and Montague Expressway. The leases further provided for negative economic consequences to Great Mall if the sign representation were not afforded to the tenants.

In 2006, the Milpitas Redevelopment Agency submitted to the City Council for review a proposed plan that merged the Great Mall Redevelopment Project (150 acres)

⁴ According to Milpitas, Great Mall also entered into a sign lease with the owner of the other Added Area, a private party.

with another existing project, Milpitas Redevelopment Project Area No. 1, composed of commercial and retail businesses on various properties around the City (2230 acres, 94 percent of merged Project Area). The merger was “proposed to create a framework *to permit businesses within both project areas to advertise on existing and new freeway signs along both the I-680 and I-880 corridors.* In addition, the proposed merger [would] permit tax increment funds generated in Project Area No. 1 to be spent for improvements in the Great Mall Project Area.” (Italics added.)

On November 29, 2006, the City Council adopted the merger by passage of Ordinance .19, which specifically iterated these “purposes and intent” to “(i) permit tax increment funds generated within Project Area No. 1 to be expended for improvements within the Great Mall Project Area, and (ii) to improve the economic vitality of businesses located within both Project Areas by providing for the installation and improvement of advertising displays located along freeway corridors within the Project Areas *which may be used by civic organizations and businesses located in both Project Areas.*”⁵ (Italics added.) In addition, the report to the City Council submitted by the Milpitas Redevelopment Agency preceding the merger and in support of it observed that its purpose was to “revitalize the Project Areas through increased economic vitality” by, among other things, “enabling the installation along highway corridors of monument and digital message board signs that will advertise *public events and private businesses within the two Project Areas . . .*” (Italics added.) And the merger’s “primary purpose,” as similarly described in the report, was to “facilitate and increase the economic viability of the Great Mall Shopping Center and other businesses in the area by, among other things, enabling construction of signs along freeway corridors *in order to increase visibility of the Project Areas’ businesses.*” (Italics added.)

⁵ The City Council adopted the merger amendment by enacting virtually identical Ordinance No. 192.18 with respect to Redevelopment Project No. 1, and Ordinance .19 with respect to the Great Mall Redevelopment Project at the same time.

Additionally, according to the report, the merger of the two Project Areas would affect the application of the Outdoor Advertising Act because it would, with one exception, make all territory within the merged Project Area contiguous, thus satisfying Business & Professions Code section 5273 with respect to freeway signs within the merged Project Area. The merger thus enabled these freeway signs, including the one at Interstate 880 and Montague Expressway, to advertise all businesses sited within the entire merged Project Area, regardless of the business's location. In other words, as noted in the Milpitas City Council Agenda for August 6, 2006, the "merger would enable the installation of signage along the freeway and highway corridors within the Project Areas to comply with the California Outdoor Advertising Act" while advertising businesses located anywhere within the entire merged Project Area.

Along with providing for the merger, Ordinance .19 expressly stated that the previous ordinances affecting the Great Mall Project Area would remain operative, specifically providing that "Ordinance No. 192.8, adopted on November 2, 1993, as subsequently amended on December 6, 1994, by Ordinance No. 192.10; on October 16, 2001, by Ordinance No. 192.13; and on October 3, 2006 by Ordinance No. 192.17, is continued in full force and effect *as further amended by this Ordinance.*" (Italics added.)

On March 24, 2008, the City gave notice to Great Mall that it intended to allow the sign lease to terminate on November 2, 2008, the end of the lease term. After expiration of the base term, Great Mall and the City entered into a sign implementation lease, which granted Great Mall a month-to-month tenancy with respect to the Interstate 880 and Montague Expressway site.⁶

On July 11, 2008, the City issued a request for proposals (RFP) inviting qualified firms within the merged Project Area to "develop and build a market driven sign that is

⁶ As of the time of briefing, the parties were apparently still operating under this month-to-month lease and no one had been finally awarded a contract in response to Milpitas's request for proposals.

the most lucrative for business advertisement and revenue flow.” The geographic scope of the new signage specifically included the Added Area within the merged Project Area at Interstate 880 and Montague Expressway, which was the subject of the Great Mall sign lease, and potentially four other freeway signs as well as up to 25 “lower-profile way finding signs” on surface streets within and throughout the merged Project Area. The RFP did not reference Ordinance .13, which had made the Added Areas part of the Great Mall Redevelopment Project Area, and did not require that proposals specifically include Great Mall, or any of its tenants, in proposed signage or advertising at the Interstate 880 and Montague Expressway location. But the RFP did require proposed signage to comply with the Outdoor Advertising Act, which meant that freeway signage on the Added Area was restricted to businesses or organizations located within the merged Project Area, including Great Mall and its tenants.

On July 24, 2008, Paul C. Fickinger, executive vice president of the property management company for Great Mall, wrote a letter to Diana Whitecar, the executive development manager for the City. The letter inquired about the scope of the RFP—one sign at Interstate 880 and Montague Expressway or multiple signs, including that one, within the entire merged Project Area—and, referring to the 880/Montague sign, noted that the “RFP is silent as to the specific design requirements of the sign. How much of the space needs to be dedicated to the City? How much of the space needs to be dedicated to the Great Mall and the anchors which are currently represented on the I-880 sign?” Whitecar responded that the City owned the sign site at Interstate 880 and Montague Expressway but that if a responder “had control of other potential sites,” then the City welcomed proposals for more than one sign. Whitecar also offered that the “City is open to design proposals and did not wish to dictate a specific design, but would expect to have the City of Milpitas clearly identified on the sign. The City does not know how much space needs to be dedicated to the Great Mall and its anchors.” Fickinger followed up on August 4, 2008, by asking Whitecar whether it was a requirement for the “winning

bidder to include representation of Great Mall and its anchors on ‘the sign.’ ” Whitecar responded that “the RFP did not address this issue.”

Whitecar did not read Ordinance .13 when she prepared the RFP. Nor did she read this ordinance in evaluating proposals received in response to the RFP, or take any steps to address whether the ordinance required proposals to include Great Mall or its tenants in signage. Nor did she consult with the city attorney’s office about this issue.

Whitecar did not recommend, nor did the City require, winning bidders to include Great Mall or any of its tenants on the proposed new signage. But, according to the City’s then vice-mayor, Robert Livengood, at a Milpitas Facilities Naming Subcommittee meeting in September 2008 at which staff presented the results of the RFP process, he told “staff to invite the three top [of eight] proposers of the Sign RFP to the next [meeting] to give live presentations which should include how the sign would provide opportunities for the Great Mall to be represented on the sign.” In this regard, the minutes of the September subcommittee meeting reflect that “Livengood recommended that discussions with the top three proposers be pursued by staff, The three proposers should be invited back to the subcommittee at the next meeting to give them an opportunity to provide a visual presentation and clarify how their signs would provide opportunities to tie in the ‘Golden Triangle’ of commercial space for Milpitas: the Auto Mall, the McCarthy Ranch Center, and the Great Mall. The three groups should be able to be represented on one or more signs” In other words, the minutes reflect that Livengood was interested in hearing from the top three bidders about sign representation not just for the Great Mall but for all three major retail spots in the merged Project Area, including the Great Mall, consistently with what Ordinance .19 had provided with respect to new signage within the merged Project Area.

II. *Procedural Background*

Great Mall filed its complaint for injunctive relief on August 7, 2008. The court apparently denied Great Mall's application for a temporary restraining order⁷ and sustained Milpitas's demurrer to the complaint. Great Mall then filed its first amended complaint for injunctive relief.⁸

The new pleading alleged that the City had adopted Ordinance .13 in 2001 "to provide freeway signs directing consumers to the Great Mall" and that the City's later adoption of Ordinance .19, the merger amendment, "in no way affected the Great Mall's right to representation" on the sign and "left unchanged the City's documented, long-standing commitment to provide freeway signs directing consumers to the Great Mall."

Great Mall further alleged that Milpitas had "violated the Great Mall sign ordinance by distributing a request for proposals that does not comply with the Great Mall sign ordinance" and taking "actions that violate the . . . Ordinance," which actions "appear designed to undermine and eliminate the benefits that were provided to the Great Mall by the Great Mall Sign Ordinance and the right to representation on the I-880 and Montague Expressway site sign." These actions are more particularly described as (1) giving notice to Great Mall of the sign lease termination and (2) issuing the RFP, which did not assure "Great Mall's right of representation on the sign;" did not "reference [or] acknowledge the purpose and intent of the Great Mall Sign Ordinance;" did not

⁷ The order denying Great Mall's application for a temporary injunction is not in the record but Great Mall acknowledges the denial in briefing.

⁸ The court's order sustaining Milpitas's demurrer to the complaint states that the "Sign Ordinance (No. 192.13) amends the redevelopment plan (previously adopted by Ordinance No. 192.8 in 1993) to add two areas of property to the 'Project Area Legal Description' of the 'Great Mall Redevelopment Project Area.' The amendment to the redevelopment plan does not direct how the 'Added Areas' to the Project Area must be used, but merely states that the purpose of adding the land to the description was to 'enable' use of the land for freeway signs for the Great Mall. The Complaint does not allege facts indicating defendants violated any ordinance identified in the Complaint or that defendants have engaged in any other unlawful conduct."

“apprise potential bidders of the [sign’s] requirements;” and did not “address how and to what extent the successful bidder will comply with the Great Mall Sign Ordinance in providing exposure to the Great Mall.”

The first amended complaint specifically sought to “enjoin [Milpitas] from continuing the RFP process until and unless [Milpitas] can demonstrate to the court’s satisfaction that the RFP process will comply with the Great Mall Sign Ordinance and protect the Great Mall’s right to representation on the sign.”

After the court overruled the demurrer to the first amended complaint, Milpitas filed an answer, followed by a motion for summary judgment.⁹ The motion was based on the grounds that Great Mall “had no right to perpetual representation” on the sign under any local ordinance, Milpitas did not violate any ordinance, and Great Mall had not and would not suffer irreparable harm, a requirement for injunctive relief.

Over Great Mall’s opposition, the court granted summary judgment, concluding that, although “the language of Ordinance No. 192.13 indicates that the intent was to add two non-contiguous areas to the Great Mall Redevelopment Project so as to allow the placement and maintenance of freeway signs for the . . . Project,” the “intent does not go so far as to impose a duty upon [Milpitas] to ensure that the Great Mall is perpetually represented on the freeway signs located on the Added Areas.” The court further concluded that this Ordinance expressed a public policy rather than creating a private and contractual vested right, and that such legislative policies are subject to revision and repeal. The court also determined that Ordinance .19, which merged the Great Mall Redevelopment Project with Redevelopment Project No. 1, was for the purpose of permitting “tax increment funds generated within Project Area No. 1 to be expended for

⁹ The court’s order stated that the “demurrer to the first amended complaint on the ground that that Plaintiff lacks the legal capacity to sue based on a failure to allege damages is overruled” and that the “demurrer to the first amended complaint on the ground that it fails to state facts sufficient to constitute a cause of action is overruled.” (Capitals omitted.)

improvements within the Great Mall Project Area” and improving “the economic vitality of businesses located within both Project Areas by providing for the installation and improvement of advertising displays located along freeway corridors within the Project Areas which may be used by civic organizations and businesses located in both Project Areas.”

As for Great Mall’s contention that the merger ordinance left unchanged the public policy expressed in Ordinance .13 that the two Added Areas were intended for the placement and maintenance of freeway signs for Great Mall, the court found this interpretation of the merger Ordinance to be unreasonable given that the Ordinance “clearly expresse[d] the intent to merge” the two project areas and to “provide for the installation and improvement of advertising displays located along freeway corridors within the merged Project Areas” to be used by “civic organizations and businesses located with both Project Areas.” This, the court found, represented a new public policy, overriding the previous one that had “expressly allow[ed] advertising [by Great Mall] in the Added Areas.”

In sum, the court’s rationale for granting summary judgment against Great Mall was its determinations that (1) that Ordinance .13 concerning the Added Areas did not impose a duty on Milpitas to ensure representation of Great Mall on signs within those areas; and (2) Ordinance .19, the merger amendment, changed the prior public policy that had expressly and specifically allowed Great Mall to be represented on Added Area signage to a policy that allowed any civic organization or business within the merged Project Area to advertise along freeway corridors also located within the Project Area. These determinations, according to the trial court, precluded the injunctive relief Great Mall sought by its first amended complaint, which accordingly was shown to lack merit.

The court later entered its amended judgment reflecting the grant of summary judgment.¹⁰ Great Mall timely appealed.

DISCUSSION

I. *Contentions on Appeal and Standard of Review*

As with any appeal from a summary judgment, the overarching issue presented is whether the trial court erred in its determination that there were no triable issues of material fact and that the moving party was entitled to judgment as a matter of law. Here, Great Mall contends that summary judgment for Milpitas was error because (1) Ordinance .13, which concerned the Added Areas, established a public policy entitling Great Mall to be represented on any sign at the Interstate 880 and Montague Expressway location and (2) Ordinance .19, which merged the Great Mall Redevelopment Project Area with Redevelopment Project Area No. 1, did not amend this public policy, requiring Great Mall to be represented on proposed new freeway signage, although not exclusively.

The general standard of review for summary judgment is well established. The motion is well taken “if all the papers submitted show that there is no triable issue as to

¹⁰ The amended judgment, which disposes of the case but also reflects an award of costs, was filed and served on August 20, 2010. Great Mall filed its notice of appeal on September 30, 2010, without specifying whether it was from the original or amended judgment. The originally entered judgment is not in the record on appeal but it may actually be the final, appealable judgment. (*Torres v. City of San Diego* (2007) 154 Cal.App.4th 214, 222-223 [where original judgment disposes of matter and awards undetermined costs, fees, or interest, the amounts of which are resolved by an amended judgment, appeal solely from amended judgment incorporating those sums does not permit review of original judgment].) But according to the online docket of the case appearing on the superior court’s website, of which we take judicial notice on our own motion, the original judgment was filed on August 2, 2010. It is not clear if a copy of the filed judgment was served, but if it was, this happened necessarily after August 2, 2010. The notice of appeal, which we construe liberally in favor of the right to appeal, was filed on September 30, 2010, 58 days later. The appeal “from a judgment entered after the grant of a motion for summary judgment” would thus be timely even from the original judgment under rule 8.104(a) of the California Rules of Court.

any material fact and that the moving party is entitled to judgment [or adjudication] as a matter of law.” (Code Civ. Proc., § 437c, subd. (c).) A moving defendant has met his burden of showing that a cause of action has no merit by establishing that one or more elements of the cause of action cannot be established or that there is a complete defense. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849-850 (*Aguilar*); *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1196; Code Civ. Proc., § 437c, subds. (f)(1) & (p)(2).) The defendant does this either through evidence that conclusively negates an element of the plaintiff’s cause of action or conclusively establishes a defense or by evidence the plaintiff does not possess and cannot reasonably obtain needed evidence. (*Aguilar, supra*, at p. 855.) Only if the defendant meets this burden does the burden shift to the plaintiff to show the existence of a triable issue of fact with respect to the cause of action or defense. (*Id.* at p. 850.)

We independently review an order granting summary judgment, viewing the evidence in the light most favorable to the non-moving party. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; *Lackner v. North, supra*, 135 Cal.App.4th at p. 1196.) In performing our independent review, “we apply the same three-step analysis as the trial court. First, we identify the issues framed by the pleadings. Next, we determine whether the moving party has established facts justifying judgment in his favor. Finally, if the moving party has carried its initial burden, we decide whether the opposing party has demonstrated the existence of a triable, material fact issue.” (*Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1438.)

There is another basis for our de novo review here. Resolution of this appeal requires us to interpret municipal ordinances. As with the interpretation of a statute, we perform judicial interpretation and construction of a local ordinance de novo. (*Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 928; *Flavell v. City of Albany* (1993) 19 Cal.App.4th 1846, 1851.)

II. Summary Judgment Was Proper

Great Mall's first amended complaint sought injunctive relief mandating Milpitas to require and ensure that Great Mall was represented on proposed new freeway signage at the Interstate 880 and Montague Expressway site, part of the merged Project Area after the enactment of Ordinance .19. As noted, Great Mall contends that Ordinance .13 had established and expressed a public policy that it must be represented on any sign at that location, and that Milpitas violated Ordinance .13 by terminating the Sign Lease and failing to ensure this representation in connection with its RFP.

Milpitas, on the other hand, contends that the public policy stated in Ordinance .13 did not create a duty on its part to ensure that Great Mall, specifically, was represented on the sign. Rather, according to Milpitas, the public policy generally expressed that the two non-contiguous Added Areas, including the Interstate 880 at Montague Expressway site, should be made part of the Great Mall Redevelopment Project Area so that businesses there, which primarily consisted of Great Mall and its tenants, could advertise on freeway signs in the Added Areas in compliance with the Outdoor Advertising Act. Further according to Milpitas, even if Ordinance .13 specifically afforded Great Mall the right to representation at the site, the City's later adoption of Ordinance .19 changed this policy to allow for all businesses and civic organizations within the entire merged Project Areas, including but not necessarily Great Mall, to be represented on new freeway signage at Interstate 880 and Montague Expressway, terminating any such affirmative right to representation Great Mall may have previously enjoyed over other businesses.

Both sides posit that the determination of who prevails in this case is resolved by our interpretation of the Ordinances involved and the public policies articulated by those local laws. While legislative bodies do not create contractual or vested rights, the laws they create declare public policies to be pursued until the legislative body elects to declare otherwise. (*Walsh v. Board of Administration* (1992) 4 Cal.App.4th 682, 697, quoting *State of Indiana ex rel. Anderson v. Brand* (1938) 303 U.S. 95, 105 [principle

function of legislative body is not to make contracts but to make laws declaring the policy of the state]; *National R.R. Passenger Corp. v. Atchison Topeka and Santa Fe Railway Co.* (1985) 470 U.S. 451, quoting *Dodge v. Board of Education of City of Chicago* (1937) 302 U.S. 74, 79 [“a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise”].)

When a court interprets a law, which, as noted, is a function a reviewing court performs de novo, the “fundamental task is to ascertain the aim and goal of the lawmakers so as to effectuate the purpose of the statute” or ordinance. (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 507.) To determine legislative intent, we first examine the words of the statute or ordinance, generally the most reliable indicator of legislative intent. If the words are clear and unambiguous, no further judicial construction is required; the plain and ordinary meaning of the words governs. But if the statutory language may reasonably be given more than one interpretation, courts may use various extrinsic aids, including a consideration of the statute’s purpose, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the provision. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214.) Thus, we look first to the language at issue, giving the words of the law their ordinary and plain meaning before addressing the underlying public policy goals expressed by the legislature in its preamble or justification for that legislation. (*Brasher’s Cascade Auto Auction v. Valley Auto Sales and Leasing* (2004) 119 Cal.App.4th 1038, 1052.) But the plain meaning rule “ ‘does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose’ ” (*In re Kali D.* (1995) 37 Cal.App.4th 381, 386.)

We have little difficulty concluding that the actual and unambiguous language of Ordinance .13 simply adopted amendments to the Great Mall Redevelopment Plan in order to enable use of the new non-contiguous Added Areas so as to permit freeway

advertising in those Added Areas promoting the “main commercial redevelopment project within the Project Area,” Great Mall and its tenants. It did nothing more. The Ordinance mentions Great Mall by name in observing that the Redevelopment Plan Amendment adopted by the Ordinance will “enable the continued use of the Added Areas for the placement and maintenance of freeway signs for the Great Mall of the Bay Area” and that this will be of direct benefit toward the elimination of blight and effective redevelopment within the Project Area, a goal of the redevelopment plan from the beginning. But the ordinance itself grants no rights or property interests to Great Mall and confers no entitlement to representation, perpetual or otherwise, on signs in the Added Areas. Apart from the language of the ordinance itself, this fact is evidenced by the parties’ entry into the sign lease, which did confer property and other rights and which provided for a termination of these rights with the end of the lease term, however that were to occur. Although Great Mall may have benefitted from the ordinance by virtue of being the major commercial interest within the Project Area as it existed, this benefit was an incidental aspect of the ordinance itself, which merely enabled or allowed for freeway advertising by businesses within the Project Area.

The public policy expressed by the ordinance is entirely consistent with our interpretation of its clear and unambiguous words, to which we give their plain meaning as we must. Even considering the plan amendments adopted by the ordinance and related documents considered by the City Council before its adoption of it, nothing suggests a policy to go further than the ordinance itself by conferring on Great Mall any rights, including rights to representation on signage in the Added Areas. The public policy expressed is rather to add the non-contiguous Added Areas to the Project Area to permit advertising for businesses located there—Great Mall and its tenants—in compliance with the Outdoor Advertising Act. In both the ordinance and the Plan Amendments, the specific mention of Great Mall suggests not the granting or acknowledgment of a right to representation on the sign but instead a recognition that Great Mall was the major retail

center within the Project Area and that freeway signage being enabled by the ordinance would therefore inure to the benefit of Great Mall and its tenants. The express purposes of redevelopment and blight elimination through the promotion of businesses within a redevelopment project area would not occur without promoting the major business centers located there. But this recognition is a far cry from creating a law or a public policy that this certain business is *entitled* as a matter of right to valuable advertising space that the ordinance merely enables.

Accordingly, the very premise of Great Mall's contentions—that Ordinance .13 established its right or entitlement to be represented on signage in the Added Area at Interstate 880 and Montague Expressway—is undercut by both the determinative language of the ordinance and the public policy it sets as well as the purpose of the Ordinance as expressed in other related documents surrounding its adoption.

Even if we were to conclude otherwise—that Ordinance .13 indeed established a law or public policy conferring on Great Mall a right to representation on the freeway sign—the City's later adoption of Ordinance .19, which merged the Great Mall Redevelopment Project Area with the much larger Project Area No. 1, terminated any such right. The specifically expressed purposes and intent of Ordinance .19 included “improving the economic vitality of businesses located within both Project Areas by providing for the installation and improvement of advertising displays located along freeway corridors within the Project Areas *which may be used by civic organizations and businesses located in both Project Areas.*” (Italics added.) And, as noted, the express language of the ordinance continues the force and effect of prior ordinances, including Ordinance .13, “as further amended by this Ordinance.” The City retained the power to so amend the prior ordinance and public policy expressed by that ordinance. (*County Mobilehome Positive Action Committee, Inc. v. County of San Diego* (1998) 62 Cal.App.4th 727, 734 [local legislative bodies have power and discretion to determine what legislation is necessary and appropriate to accomplish the public good]; *People's*

Advocate, Inc. v. Superior Court (1986) 181 Cal.App.3d 316, 328 [every legislative body may modify or abolish acts passed by itself or its predecessors and cannot bind future legislatures].)

Accordingly, even if we assume that Ordinance .13 had conferred a right to Great Mall to be represented on signage in the Added Areas, Ordinance .19 amended any such right by merging the two Project Areas for the express purpose of equally enabling *all* businesses located in the entire merged Project Area, which would include Great Mall, to advertise on the sign. If Great Mall had arguably been previously guaranteed representation by virtue of its name appearing in Ordinance .13 or its status as the major retail center within the Great Mall Redevelopment Project Area, the merger altered this guarantee by broadening the base of major retailers within the newly defined merged Project Area. Whatever privileges or benefits Great Mall singly enjoyed with respect to signage as the primary business within the previous Project Area, the merger amendment created a level playing field among *all* businesses within the merged Project Area and equally spread among them the opportunity to advertise on signage, in compliance with the Outdoor Advertising Act. The inherent meaning of the merger of the separate project areas into one was that Great Mall was no longer the single major business within the merged Project Area, entitled to whatever incidental benefits had previously flowed from that status with respect to freeway signage. The clear and unambiguous language of Ordinance .19 simply cannot be read any other rational way.

Because the language of Ordinance .19 is clear and unambiguous, we ascribe to it its plain meaning, which amended and terminated any right that Ordinance .13 may have specifically conferred on Great Mall to advertise on signage at Interstate 880 and Montague Expressway. We also attribute this same meaning to the public policy set by Ordinance .19. And, as with Ordinance .13, we conclude that the purposes of Ordinance .19 as expressed in documents considered by the City Council when adopting it are consistent with our interpretation. Promoting the commercial vitality of the entire

merged Project Area and eliminating blight throughout is consistent with enabling *all* businesses therein to advertise on freeway signage and affording them equal opportunity for representation on freeway signage without preference or guarantee to Great Mall alone.

We have concluded that Ordinance .13 did not confer on Great Mall a right to be represented on freeway signage at Interstate 880 and Montague Expressway. We have alternately concluded that, even if such a right were afforded, it was terminated by the City's adoption of Ordinance .19. We accordingly reject Great Mall's contention that Milpitas violated Ordinance .13 by terminating the sign lease, issuing the RFP, or not ensuring that Great Mall would be represented on signage produced in response to the RFP.

Having so concluded, we determine through the course of our independent review that Great Mall, as a matter of law, is not entitled to the injunctive relief prayed for in its first amended complaint. Accordingly, the pleading lacks merit. Milpitas was therefore entitled to summary judgment, as the trial court so found.

DISPOSITION

The judgment is affirmed.

WALSH, J.*

WE CONCUR:

BAMATTRE-MANOUKIAN, ACTING P.J.

MIHARA, J.

*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.