CP&DR

VOL. 31, NO. 4 — APR 2016

CALIFORNIA PLANNING & DEVELOPMENT REPORT

San Diego Considers Dueling Plans to Finance Stadium, Convention Center

BY ANDREW KEATTS

What do touchdowns, trade shows, room service, rivers, and dorm rooms have in common? In San Diego, quite a bit.

Spooked by the possible relocation of the San Diego Chargers football team, the city is doubling down on opportunities not only to retain the Chargers but also to pursue a host of other initiatives related to tourism and economic development. The matters may be resolved through one of two competing measures that are expected to appear on upcoming ballots.

"The Citizens Plan" could appear on the citywide ballot as early as November. Proposed by Cory Briggs, an environmental attorney famous instead for halting city projects, it would raise hotel taxes and allow the city to expand its convention center, build a new Chargers stadium, secure long-term funding to promote the city to tourists, create a new San Diego River park and hand San Diego State University an expansion opportunity. It would make way for a joint-use convention center-stadium built on 10 downtown acres, next to the Padres ballpark and across the street from the city's existing convention center.

In his analysis of the complex plan, San Diego City Attorney Jan Goldsmith said the City Council should consider refusing to put the initiative before voters on

– CONTINUED ON PAGE 13

insight

WILLIAM FULTON

Will Medical Marijuana Cases Drive Land Use Law From Now On?

Medical marijuana in California may be a pretty intense battleground, but at the same time, to mix metaphors, it usually looks like a policy cul-de-sac. Advocates of access to medical marijuana are generally single-issue folks who don't care much about any other local issue. And advocates of strict regulation – who include a vast number of local elected officials throughout the state – don't break down along traditional

– CONTINUED ON PAGE 18

inside

Los Angeles Seeks Citywide Overhaul of Community Plans

With a controversial measure that would force the City of Los Angeles to update its 35 community plans headed for the March ballot, Mayor Eric Garcetti is calling for the update of all of the city's community plans. He intends to include funding in his upcoming budget to support this effort. And in a motion introduced by several councilmembers the City Council instructed the Planning Department to report on overhauling the Community Plan program. They also called for recommendations on ways to increase oversight of the environmental review process, and upgrade outdated technology.

City leaders also called for a new Citywide General Plan, which has not been fully updated in more than 20 years. "We have a responsibility to plan for prosperity and growth in ways that reflect the energy of this great City and protect the character of our neighborhoods," said Mayor Eric Garcetti. "I want Angelenos to have a sense of ownership over the development of their communities and these reforms help us get there." Garcetti pledged to nearly triple the planning department's community plan staff, to better ensure all plans are updated in no more than 10 years. The mayor's budget will include $1.5 million in new funding for the Community Planning program and General Plan program, as part of his upcoming 2016-17 budget. He also laid out a plan for ongoing funding for the program to ensure updates are completed within 36 months. (See prior CP&DR coverage.)

Agreement Reached on Klamath River Dam Removal

A pact between California, Oregon and a private utility, PacifiCorp, could finally lead to the demolition of four hydroelectric dams that block salmon migrations up the Klamath River. It does so without requiring direct federal involvement and, therefore, without requiring congressional approval. In 2010 a pact gave US Interior Department a major role in decommissioning of dams and required Congress to sign off on the removal; Congress refused to do so last year hen it was in the throes of partisan gridlock. According to the agreement California will contribute $250 million in state bond money and PacifiCorp customers will pay a surcharge up to $200 million, which should cover the estimated costs. The removal of the dams will be managed by the new Klamath River Renewal Corp.

Sacramento County to Pursue $3.6 Transportation Funding Measure

Sacramento County voters may decide whether to increase the county sales tax by half-cent to fund major road and transit improvements. Proposed by the Sacramento Transportation Authority, the tax could raise $3.6 billion over 30 years to be spent across the county. Much of these types of projects were previously funded by gas tax, which has been diminishing in the last few years. Placer and Yolo counties are considering similar taxes. Cities would be allowed to spend their allocation as they chose, but many proposed project have been listed. These include freeway interchanges, bike overcrossings, Sacramento's downtown streetcar, Elk Grove's intermodal train station and road repairs and widenings. The authority board voted to begin collecting signatures for a November ballot; the measure will require a two-thirds majority. The tax will be in place 2017 to 2047, overlapping for a few years with the current sales tax increase that was voted on in 2004 and will expire in 2039.

San Francisco Considers $5 Billion Price Tag for New Sea Wall

San Francisco Port Commission released a report (pdf) estimating that it will cost $5 billion to protect the wharf against sea level rise and major earthquakes. The current seawall, stretching from Fisherman's Wharf to Mission Creek, sits on top of 100 year-old landfill made up of young bay mud and marine clay, a rock pyramid and a bulkhead wall. There is a 72 percent

– CONTINUED ON PAGE 3

CP&DR

William Fulton
Editor & Publisher

Josh Stephens,
Morris Newman, Kenneth Jost
Contributing Editors

Susan Klipp
Fiscal Officer

Talon Klipp
Office Manager
Graphics & Website

is published semi-monthly by

Solimar Research Group
Post Office Box 24618
Ventura, California 93002

Phone / Fax: 805.652.0695

Subscription Price: $238 per year

ISSN No. 0891-382X

Visit our website:
WWW.CP-DR.COM

You may e-mail us at:
INFO@CP-DR.COM

– CONTINUED FROM PAGE 2

chance a large earthquake will happen in the next 30 years, with a high probability of causing major damage to the wall and the areas behind it. Potential solutions are retrofitting the current wall and wharf, improving the liquefiable fill land-side of the seawall or jet grouting, which means pouring concrete into hoses in the ground. The Commission is proposing a combination of all three and recommends that the work be completed within ten years.

SCAG Approves of $556 Billion SCS/RTP

The Southern California Association of Governments Regional Council adopted the 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy in early April. The second generation of the region's SCS, mandated by Senate Bill 375, the plan is a long-range vision that includes future transportation mobility and housing needs with economic, environmental and health goals. The RTP lists over $556.5 billion in projects and investments for transportation systems across the region. They include projects to optimize existing roadways, promote active transportation, ease goods movement, implement new technologies, improve airport access, and focus growth around "high-quality transit areas" and other urban centers, improve air quality, and preserve natural lands.

Solar Plant near Baker Wins Federal Approval

In a move designed to increase national energy independence, the Obama administration approved a 1,767-acre solar energy plant at Soda Mountain, in the Mojave Desert. Located near the town of Baker, the project is on land managed by the U.S. Bureau of Land Management and being developed by Bechtel. The project will provide enough power for 86,000 homes. Many environmental groups are upset. They claim that the move undermines the administration's recent designation of new national monuments in the California desert and claim that the project threatens migration patterns of desert bighorn sheep. The BLM counters that the approved project is smaller than what was proposed and that steps have been taken to mitigate its impacts on the Mojave National Preserve.

Los Angeles to Collect Developers' Park Fees

Los Angeles may shore up is system by which new development contributes funds to parks. Apartment developers in Los Angeles have skipped paying park-building fees, also known as Quimby fees, because of a technicality in the law. Quimby fees are charged on new homes on subdivided land while Finn fees are charged on housing units built on property that undergoes a zone change. The majority of the new rental developments do not require a zone change, and therefore no park fees are required. The planning commission has proposed that developers pay $5,000 for each apartment unit they build and $10,000 per unit fee on houses or condos built on subdivided land. These fees will be phased in over the next two years, and builders could receive credit for building parks on the properties.

Phase One of Treasure Island Development Commences

Construction of the first phase of the $6 billion Treasure Island and Yerba Buena Island redevelopment has begun. The first phase will include demolition of 40 structures and construction of new roads, utilities, and parks. The phase will feature up to 500 hotel rooms, 2,100 residential units. Infrastructure work alone will cost around $155 million and take nearly three years, while housing construction is expected to begin within a year. The entire project will take 10-15 years and include 8,000 residential units, of which 25 percent will be affordable. The developers involved are Lennar Urban, Kenwood Investments, Stockbridge Capital Group and Wilson Meany.

Sacramento Joins Vision Zero Movement

Along with other cities in California, Sacramento is joining the Vision Zero movement to eliminate bicycle and pedestrian fatalities on city streets. These cooperative movements combine government, advocacy groups, residents and others to make streets safer for all users. In Sacramento approximately 130 people died in crashes between 2010-2014, including 48 pedestrians and 13 cyclists. The city will set up a Vision Zero task force including police and fire representatives to determine trouble spots to increase officers in certain locations. City traffic chief Hector Barron told the Sacramento Bee that it is an "opportunity to shine a light on who is most at risk. Disproportionately, it's low income people in the suburbs." The city

– CONTINUED ON PAGE 4

– CONTINUED FROM PAGE 3

has begun by improving bike lanes, slowing traffic, separating sidewalks from traffic, flashing beacons at crosswalks and pedestrian traffic signals. (See prior CP&DR coverage.)

Los Angeles Approves Controversial High Rises in Hollywood

Los Angeles City Council approved, 12-0, a plan for the Palladium Residences, one of the city's most controversial residential projects. The council backed a zoning and height district change as well as other approvals for two 30-story towers advanced to the Hollywood Palladium theater. Opponents of the $324-million project, primarily the AIDS Healthcare Foundation (AHF) next door, argue the complex is too tall and dense for the location, which has notorious vehicular traffic. The foundation's executives plan to sue to stop the construction and they have begun gathering signatures to ban other "mega-developments." The apartments will add hundreds of much needed apartment units to a city that has experienced serious housing shortages. Approximately 37 units will be set aside for lower-income families. Protests against Palladium Residences spawned the Neighborhood Integrity Initiative, a ballot measure that would significantly impact planning and development in Los Angeles. AHF filed a lawsuit against the City Council shortly after the approval. (See prior CP&DR coverage). ■

Social Justice, Regional Economics at Odds in Downtown Oakland Plan

BY JOSH STEPHENS

Uber has finally arrived in Oakland. Not the ride service – that's been around for a while – but rather the company itself, which recently moved its headquarters from San Francisco to a former Sears department store. What would be a triumph of economic development for many cities is making many Oaklanders nervous. They fear that what Uber has done to the taxi industry, wealthy residents and boutique businesses might do to Oakland's working-class heritage.

Partially in response to these changes, the city is finally devising a specific plan for Downtown Oakland – for the first time in the city's history.

Community activists hope that the plan will strike a balance between promoting Oakland as a regional hub and protecting existing residents, many of whom are African-Americans and Latinos living below the poverty line. If any city can figure out how to use a land use plan to promote social equity, it's Oakland. The city has not only a diverse population — socioeconomically and ethnically — but also a long history of social activism.

"I want to believe that Oakland is going to be very intentional about how we crack the code on that," said McElhaney.

The tech companies moving into downtown Oakland are encountering an antique urban fabric. For the entirety of its 164-year history, the area has gotten along, for better or worse, without a specific plan. Market forces and citywide regulations led to the relatively ordinary collection of offices, government buildings, commercial offerings, and infrastructure that compose the skyline of the Bay Area's second city. The area's public realm is weathered, private development has been haphazard, and sense of place is lacking.

Given the pace of change in the Bay Area, a plan cannot come quickly enough.

"In an ideal world, I'd have said our intentional planning should have happened 10 years ago to get ready for the boom that's happening now," said City Council Member Lynette McElhaney, who represents part of downtown.

As office and residential rents in San Francisco and the Peninsula have soared, demand for Oakland's relatively affordable office space and housing only just begun to rise. Formerly middle-income neighborhoods like Temescal and Broadway-Valedez are in the throes of gentrification, with ever more professionals seeking refuge from San Francisco's stratospheric rental rates. Downtown presents possibly the last, best chance to embrace change deliberately while avoiding displacement and other objectionable impacts of gentrification.

Called Plan Downtown Oakland, the plan is expected to encompass everything from housing targets to support for the arts to a possible cap park over the 980 Freeway. The planning process launched with a series of community meetings in mid-2015. An alternatives report was recently published, and a draft plan is expected by August. Adoption could come as early as October. It is being funded in part by a $750,000 grant from the Metropolitan Transportation Commission.

It has some heavy lifting to do. Downtown Oakland itself is diverse, with a half-dozen neighborhoods surrounding the City Center, extending from Lake Merritt to the port. In 2013, downtown had 73,000 jobs and over 21,000 residents. Using projections by the Association of Bay Area Governments, the plan anticipates the addition of 12,309 new households and 31,224 jobs to downtown by 2040. A report by San Francisco Planning and Urban Research (SPUR) encourages the city to try to exceed those numbers, envisioning 15,000 households and 50,000 jobs.

In the early 2000s with then-Mayor Jerry Brown promoted a largely successful campaign to boost the area's population by 10,000 residents. But that effort, which resulted in roughly 5,500 units built or approved during his

– CONTINUED ON PAGE 6

>>> Social Justice, Regional Economics at Odds in Downtown Oakland Plan

– CONTINUED FROM PAGE 5

eight-year tenure, was nothing like the overhaul that is now long overdue. The decision to create a specific plan comes along at a moment when Oakland has begun to embrace its role, and opportunity, as one of the hubs of the country's hottest regional economy.

The area's public realm is weathered, private development has been haphazard, and sense of place is lacking.

"The key here is understanding the zeitgeist of the Bay Area right now, about tremendous transformation, huge wealth moving in, prices rising quickly, demographic shift, a sense that cities are evolving," said SPUR Policy Director Egon Terplan.

The "new" Oakland is symbolized by the arrival of the transportation network company Uber, which moved its headquarters from San Francisco to a former Sears department store. While relocations like this may be considered a victory for economic development, some Oaklanders are wary.

Providing new market-rate housing for highly paid tech workers and creative office space for their companies does not rank highly among the priorities of many community activists. Between 2000 and 2010, Oakland lost 25 percent of its African-American residents, dropping to around 100,000. A recent UC-Berkeley report contends that most downtown is either "undergoing displacement" or experiencing "advanced gentrification," and activists fear that any plan that increases Oakland's regional prominence will do so at the expense of longtime locals. In downtown especially, low-income residents have long taken advantage of older multifamily rentals, which are rent-stabilized, and places like single-room occupancy hotels.

For many, that effort relies on affordable housing.

"Before anyone can support a downtown plan or any concept of it, we need to figure out in all these plans they have, what is the level of affordable housing in these specific plans?" said Jackson.

Drawing on the city's Housing Equity Roadmap, adopted in September, the alternatives report includes 13 tools and strategies that the department recommends to preserve and promote subsidized and workforce housing. They include impact fees, increased development, a possible housing bond, density bonuses, reduction and unbundling of parking requirements, and a strategy for development of public lands. By some interpretations, the alternatives report represents a down-zoning of what is currently permissible.

Early reviews among some of the city's housing activists are tepid, at best. They say that the city's rhetoric about affordable housing and the alternatives report do not adequately respond to their concerns. Many are not optimistic about the affordable housing provisions that will be in the upcoming draft plan.

"If we don't have meaningful targets – high enough targets to promote a good mix and good opportunity for low-income households and take the steps necessary to meet that target in a real way, I worry that the city is not doing what it needs to," said David Zisser, staff attorney with Public Advocates.

Whatever stakeholders' concerns may be, if the specific plan is not adopted soon, developers may have their way with Oakland before planners can. By some accounts, Oakland stands on the cusp of development boom. Currently, Oakland's elevated rents are attractive compared to San Francisco's.

For the time being, development remains deceptively stagnant. Not because there's no demand but because

– CONTINUED ON PAGE 7

>>> Social Justice, Regional Economics at Odds in Downtown Oakland Plan

– CONTINUED FROM PAGE 6

the rents, in the mid-$30 per square foot (compared to San Francisco's $60-$70) does not justify the cost of building yet.

When the economics tip in favor of development in Oakland, they may tip quickly. At that point, developers — some of whom are reported to be stockpiling steel already — may rush in and be willing to build as high as current regulations allow for, but without any community benefits or contributions to the social goals that the specific plan is intended to accomplish.

While affordable housing may satisfy local concerns, the need for commercial space speaks to downtown Oakland's regional prominence. Its position at the confluence of all four of the region's Bay Area Rapid Transit rail lines.

"We have to do this now," said McElhaney. "Otherwise, I think market forces can drive a result that is not necessarily sensitive to the existing residents and businesses. They can't just happen."

On the housing side, several major projects are in the works.

The most controversial of those projects may be a symbol for battles over the specific plan. The City Council recently approved at 24-story, 360-unit high rise in Uptown consisting entirely of market-rate units on a parcel formerly owned by the city. Housing activists called the project "segregated housing" and decried the vote as a "giveaway" to developers.

Oakland planners insist, though, that any affordable housing strategy must also promote market rate housing.

"We do feel that by building for all income levels, by meeting the demand for a variety of income levels, we help the poorest people," said Planning Director Rachel Flynn. "New people want to come to Oakland and if we don't have housing….they'll go after the existing housing."

Jackson said that Oakland is "obviously part of the solution" to the region-wide housing crisis. But he cautioned against any plan that would permit an undue amount of market-rate housing in the name of regionalism.

"If tech jobs are being created in the Peninsula then the Peninsula needs to step up and build housing, affordable and market rate," said Jackson.

With debates ongoing all over coastal California over the relationship between market-rate and affordable housing, Plan Downtown Oakland must strike a careful balance. What that height should be depends in part on how much affordable housing the city wants to promote. Some suggest that the city might opt for artificially low height or floor-to-area ratio limits so that the city can award greater heights and/or more floor area in exchange for the development of subsidized housing via density bonuses.

The key for the city is to craft regulations that entice developers to seek density bonuses. Permitted densities have to be low enough to make bonuses attractive, but not so low that they stifle the development it seeks in the area.

"If (permitted) densities are higher….(and) developers don't think the market will support that level of development, they won't try to get more density," said Zisser.

While affordable housing may satisfy local concerns, the need for commercial space speaks to downtown Oakland's regional prominence. Its position at the confluence of all four of the region's Bay Area Rapid Transit rail lines, including two subterranean downtown stations, presents

– CONTINUED ON PAGE 8

>>> Social Justice, Regional Economics at Odds in Downtown Oakland Plan

– CONTINUED FROM PAGE 7

opportunities for transit oriented offices and other commercial spaces and the kind of car-free mobility that Bay Area cities are promoting through initiatives like Plan Bay Area.

"A lot of people think about growth and focus on residential development because that's the most immediate thing," said Terplan. "We argue there should be residential development….but, frankly, a greater share of growth should be focused on employment."

"If jobs don't go there, they'll go to a place where they're much more likely to drive," said Terplan. "Once we put residential in, it's going to be in there forever," said Terplan. "You cannot re-create a rail stop in a region of 7 million people that's growing. You cannot recreate land in a core."

If the plan attracts commercial development and high-rent tenants, the city will have to reconcile regional prosperity with local hardship. Activists say that new commercial space will attract startups and tech firms that employ few unskilled, middle-income workers. Tey are thus unlikely to hire existing residents.

"The city rolled out the red carpet for Uber, an organization that refuses to recognize its drivers as actual employees and workers," said Chris Jackson, a social worker with Alliance of Californians for Community Empowerment.

Terplan sees these concerns as shortsighted.

"When you get slightly larger firms, you get firms that have a wider range of occupations," said Terplan. "As companies fill out their org charts, you start to see jobs that don't need a college degree."

No matter how big they get, the Ubers of the world will likely not be hiring artists. Activists are, therefore, also lobbying for the plan to include live-work spaces and other provisions that enable artists to live and work in the area, and to remain part of the city's social fabric.

One creation that planners would like to do away with is the 980 Freeway trench. The freeway is accused of tearing apart a stable, low-income neighborhood when it was constructed in the 1960s. The concept for Plan Downtown Oakland includes the possibility of capping the freeway and spanning the trench with a park. As exciting as that prospect is, its construction is likely many years off, if ever.

Contacts & Resources

Plan Downtown Oakland

Rachel Flynn, Planning Director, City of Oakland, rflynn@oaklandnet.com

Chris Jackson, Social Worker, http://www.calorganize.org/

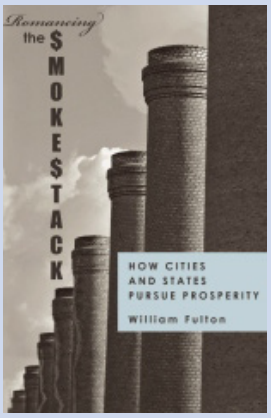
Lynette McElhaney, Council Member, Oakland City Council, lmcelhaney@oaklandnet.com

Egon Terplan, Regional Planning Director, eterplan@spur.org

David Zisser, Staff Attorney, Public Advocates, Inc., eterplan@spur.org ■

Romancing the $moke $tack
How Cities And States Pursue Prosperity

Bill Fulton's Book On Economic Development



legal digest

County Can't Undermine Dispensary Referendum, Court Rules

BY WILLIAM FULTON

In repealing a medical marijuana ordinance that a referendum sought to overturn, the Kern County Board of Supervisors erred in also repealing the underlying ordinance that the referendum's backers were seeking to reinstate, the Fifth District Court of Appeal has ruled. It's the third appellate ruling in a medical marijuana zoning case to be issued in the last month.

In 2009, Kern County adopted an ordinance effectively allowing medical marijuana dispensaries in commercial areas. Two years later, however, the county adopted a new ordinance banning medical marijuana dispensaries everywhere in the county. When confronted with a referendum to overturn the 2011 ordinance, the county chose not to place the referendum on the ballot but, rather, repeal the ordinance as the referendum would have, as is permitted under the Elections Code. However, the county also repealed the 2009 ordinance, which had the effect of creating a ban on dispensaries.

In striking down the county's decision, the Fifth District concluded that under the Elections Code, a local elected body "must revoke the protested ordinance in all its parts and must not take additional action that has the practical effect of implementing the essential feature of the protested ordinance."

The court added: "We recognize that, ordinarily, the board of supervisors would have the authority to repeal its earlier legislative actions such as ththe e 2009 Ordinance. Under the unusual facts of this case, however, the board of supervisors' general authority to legislate is limited by the protections [Elections Code] section 9145 affords the referendum process. The board of supervisors went beyond simply repealing the Dispensary Ban Ordinance and their additional action if upheld, would achiev a result nearly identical to the impact of the Dispensary Ban Ordinance – an impact that County voters sought to avoid by submitting a petition protesting the adoption of the Dispensary Ban Ordinance."

The county's regulation of medical marijuana dispensaries began in 2006, when the board of supervisors adopted an ordinance that allowed six dispensaries subject to licensing procedures by the Kern County Sheriff and treated those dispensaries as "a pharmacy for zoning purposes".

In 2009, the board of supervisors repealed the 2006 ordinance and adopted a new ordinance removing most restrictions. Dispensaries were still treated as pharmacies for zoning purposes but could not be located within 1,000 feet of a school. Over the next year, more than 30 dispensaries opened in Kern County.

Twice during 2010, the county adopted moratoria on new dispensaries. While the second moratorium was in effect, the county held a series of public workshops on the topic. In 2011, the board of supervisors repealed the 2009 ordinance and adopted yet another ordinance that prohibited dispensaries anywhere in the county and declared them to be a public nuisance subject to abatement actions.

Prior to the effective date of the so-called "Dispensary Ban Ordinance," the county received a valid referendum petition protesting some provisions of the ordinance. Pursuant

– CONTINUED ON PAGE 10

>>> County Can't Undermine Dispensary Referendum, Court Rules

– CONTINUED FROM PAGE 9

to Elections Code 9144, four sections of the Dispensary Ban Ordinance were suspended pending further county action on the referendum. Under Elections Code 9145, the board of supervisors had the option of simply repealing the entire Dispensary Ban Ordinance as called for in the referendum or placing the referendum on the ballot.

In February of 2012, the board of supervisors repealed the Dispensary Ban Ordinance, which under the Elections Code meant the board could not take any further action on dispensary bans for a year. However, the board took two other actions as well. First, it placed a measure on the June 2012 ballot permitting dispensaries only in industrial areas. Measure G subsequently passed with 69% of the vote. Second, it repealed the 2009 ordinance permitting dispensaries in commercial areas.

Shortly thereafter, a group of dispensaries operating in commercial areas sued the county, claiming that Measure G was invalid because the board of supervisors had not followed the California Environmental Quality Act in preparing it and placing it on the ballot. In April 2014, Kern County Superior Court Judge David Lampe issued a written order agreeing with the dispensary owners that Measure G was invalid – a ruling later upheld by the Fifth District.

Within a month of that ruling, however, the county filed a civil lawsuit against a marijuana dispensary operating in Rosamond, seeking injunctions based on a nuisance complaint.

In striking down the county's decision, the Fifth District concluded that under the Elections Code, a local elected body "must revoke the protested ordinance in all its parts and must not take additional action that has the practical effect of implementing the essential feature of the protested ordinance."

In November 2014, Lampe ruled granted a preliminary injunction ordering the dispensary to shut down. Subsequently, the Fifth District stayed enforcement of the preliminary injunction while considering the case.

The issue in front of the appellate court was whether, given the repeal of the 2011 Dispensary Ban Ordinance and the invalidation of Measure G, the 2009 ordinance permitting dispensaries in commercial areas was still in effect.

The dispensaries argued that Elections Code Section 9145 required a return to the status quo ante – that is, the situation immediately prior to the repeal of the 2011 ordinance, meaning the 2009 ordinance would still be in effect. The county argued that a return to the status quo ante would comply with the Elections Code but was not required. The appellate court sided with the dispensaries.

"Specifically," the court ruled, "we conclude the additional action taken by a board may not have the practical effect of implementing the essential feature of the protested ordinance."

Doing otherwise, the court said, "would allow boards of supervisors to nullify or significantly burden the exercise of the referendum power by repealing the protested ordinance and immediately taking action that produces, from a practical perspective, essentially the same result."

The county argued that a lack of an ordinance permitting dispensaries is not the same as a ban, but the court disagreed, concluding that the invalidation of Measure G because of the CEQA error revealed that there was no ordinance in the county permitting dispensaries – essentially creating a ban.

The Case:

County of Kern v. T.C.E.F. Inc., No. F070813

The Lawyers:

For T.C.E.F.: Abraham A. Labbad, abelabbad@gmail.com

For Kern County: Theresa A. Goldner, County Counsel, tgoldner@co.kern.ca.us ■

State 'Incentives' to Charter Cities to Use Prevailing Wage Struck Down

BY WILLIAM FULTON

A state law that prohibits charter cities from receiving state funds for a public construction project if it allows the contractors to not pay prevailing wage has been upheld by a split appellate court.

Writing for a two-justice majority in City of El Centro v. Lanier, Fourth District Court of Appeal Justice James McIntyre concluded that Labor Code Section 1782 does not violate Article XI, section 5(a) of the California Constitution, which provides home rule authority and Article XIII, section 24(b), which prohibits the state from restricting the use of local tax revenues. McIntyre ruled that wage levels on public construction projects are a local matter and that Section 1782 does not create a conflict with state law governing charter cities, which is derived from the home rule provision in the Constitution.

"Section 1782 does not conflict with these charter city laws as it does not mandate or require that charter cities do anything, such as paying prevailing wages for its public works projects," he wrote. "Rather, section 1782 provides the Cities with a choice, to meet the requirements set forth in section 1782 to obtain state funding or financial assistance on its public works projects, or forgo eligibility for those funds."

In a dissent, Justice Patricia Benke expressed flat-out disagreement with the majority but also pointed to a provision of Section 1782 that prevents local governments from receiving any construction funds for two years after permitting a contractor to move forward without paying prevailing wage.

"[T]here is no authority which holds that the Legislature may attempt to obtain such a waiver of constitutional rights from municipalities by way of incentives as opposed to outright fiscal coercion," she wrote." Indeed what authority exists with respect to fiscal incentives strongly suggests that where municipal activity is protected by the home rule provisions of the Constitution, the state may not use its fiscal power as a means of inducing a waiver of that protection."

The saga of this case actually began in 2012, when the California Supreme Court ruled in a case from Vista, in which the court threw out a state law requiring charter cities to comply with state prevailing wage laws. (*State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista* (2012), 54 Cal.4th 547) The Supreme Court ruled that contractor wages in local public projects were a matter of local concern and that the law created a conflict with the state law, derived from the home rule provision, governing the activities of charter cities. In response, the state in 2013 adopted Section 1782, which switched to an incentive approach. The law specifically stated it was not addressing what is and is not a "municipal affair".

A group of cities led by El Centro and backed by the League of California Cities filed a peremptory court challenge. They lost in the trial court and then appealed.

On appeal, McIntyre followed the Vista reasoning but came to a differ ent conclusion on the conflict question. "As respondents [the state] noted, the Legislature often provides financial incentives for local governments," he wrote. He also rejected the cities' argument that the law was impermissibly vague because it did not specify which state programs were affected by the law.

In her dissent, Benke wrote: "By giving the Legislature an indirect means of achieving what it may not do directly in one relatively narrow area—prevailing wages on construction projects—the majority opinion substantially weakens that independence and innovation in an innumerable number of other fields where a future Legislature may be hostile to local experimentation and interests."

The Case:

City of El Centro v. Lanier, D066755

The Lawyers:

For Cities: Lounsbery Ferguson Altona & Peak, James P. Lough, jpl@lfap.com

For State: Mark R. Beckingon, Deputy Attorney General, Mark.Beckington@doj.ca.gov ■

Thomas, Kennedy Seek to Revisit *San Remo Hotel* Ruling

BY WILLIAM FULTON

The U.S. Supreme Court declined on April 25 to take a case from Connecticut that would have overturned the 1985 case *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U. S. 172, a pre-First English case in which the court ruled that property owners seeking to a regulatory taking case in federal court have to first ensure that all administrative remedies at the local or state level are exhausted and then seek compensation through whatever mechanism is provided by the state.

However, Justices Clarence Thomas and Anthony Kennedy dissented from the denial of certiorari in A*rrigoni Enterprises v. Town of Durham*, saying they wanted to use the case to revisit the questions about Williamson County raised in the dissent in the 2005 Supreme Court case, *San Remo Hotel v. San Francisco*, 545 U.S. 323. That case involving a dispute going back decades over payment of an in-lieu fee or provision of replacement units when a hotel is converted from residential to tourist use.

By a 5-4 vote, the Supreme Court ruled that such a case cannot be litigated in federal court even though federal constitutional issues are at stake, in part because of the provisions in Williamson County that state administrative procedures must be followed. Thomas and Kennedy were on the short end of the vote at the time.

This marks the second time since the passing of Justice Antonin Scalia in February that Thomas has written separately on the denial of certiorari in a land use case. At the end of February, he wrote a concurring opinion to the denial of cert in *CBIA v. City of San Jose*, in which he clearly wanted to reconsider the *Nollan/Dolan* line of cases, which requires rough proportionality in exactions imposed through quasi-judicial action but not legislative action.

As Bill Fulton pointed out back in February, Nollan was Scalia's first big Supreme Court opinion. By contrast, Scalia sided with the majority in San Remo Hotel, putting him on the opposite side of the case from Thomas. ■

>>> San Diego Considers Dueling Plans to Finance Stadium, Convention Center

– CONTINUED FROM PAGE 1

Image Credit: San Diego Chargers

the November ballot, due to its legal issues, including a possible city charter violation involved in the distribution of the tax funds and violation of the "single subject" rule for initiatives.

"Some of those legal issues raise significant risk to the city," Goldsmith wrote in a statement.

Briggs has dismissed Goldsmith's analysis as unserious and political, and criticized him for attempting to disenfranchise voters. "There is nothing illegal about the Citizens Plan," said Briggs, who is best known for halting a previous attempt to expand the convention center, alleging it was funded with an illegal tax increase.

Briggs has also filed California Environmental Quality Act suits against Walmarts across the state. One recent analysis of CEQA litigation found that, on behalf of clients, he files more CEQA lawsuits than anyone else in the state.

But his omnibus initiative has put him on the other side of the table, aligning him with many civic interests for the first time in memory. And he's building a coalition behind the plan. A former city councilwoman, state assembly member, and the former owner of the San Diego Padres are all supporting the plan. Many other local officials and candidates have endorsed it as well. Mayor Kevin Faulconer has stayed out of the fray.

It's also something of a trick play, competing with the Chargers' own plan to build a joint convention center-stadium with hotel tax money. That plan likewise envisions one building split between a convention center and a stadium, on the same downtown property as the Citizens Plan, but it comes with fewer stipulations and different financing mechanisms.

– CONTINUED ON PAGE 14

>>> San Diego Considers Dueling Plans to Finance Stadium, Convention Center

– CONTINUED FROM PAGE 13

Image Credit: San Diego Chargers

Citizens Plan 101

The Citizens Plan pays its way with an increase in the city's hotel tax, which is currently 12.5 percent. The city charges a flat 10.5 percent tax, plus another 2 percent goes to the Tourism Marketing District, a citywide district that includes only hotels and goes to finance marketing.

The Citizens Plan would eliminate the TMD altogether and then charge a flat 15.5 percent tax – a number Briggs says he selected to be competitive with other western cities.

But hotels can cut their taxes back down in two ways.

If the hotels hold a vote to re-constitute the TMD on their own, they can deduct two percent from their tax bills to the city. Further, if hotels decide they want to fund the construction of a new convention center, they also deduct 2 percent.

Most of the provisions in the Citizens Plan are structured this way. Voters would approve a list of big-picture projects, but none of them are obligations. Individual entities and interest groups – the hotel industry, the Chargers, SDSU, and others – will need to take additional action to make each one a reality even if the initiative passes.

And because the original tax hike is structured as an increase that would go into the general fund – and not directly pay for a new convention center or tourism promotions – Briggs believes the plan needs just a bare majority voter approval.

But Briggs also attached some strings.

For one, the Citizens Plan stipulates the convention center would expand with a new structure – which the plan refers to as an "annex" – across the street from the existing

– CONTINUED ON PAGE 15

>>> San Diego Considers Dueling Plans to Finance Stadium, Convention Center

– CONTINUED FROM PAGE 14

waterfront convention center. The plan bars the convention center from expanding at within its existing footprint – a proposal that has been very controversial in San Diego in the past

Four years ago, San Diego tried to expand the convention center on the waterfront, to be funded by having hotel owners – rather than all city voters – approve a specific tax increase. Briggs successfully argued it was an illegal tax hike. He also argued that expansion of the existing convention center would "wall off the waterfront" in violation of the California Coastal Act.

The "Citizen Plan" would make way for a joint-use convention center-stadium built on 10 downtown acres, next to the Padres ballpark and across the street from the city's existing convention center.

Briggs also has a lawsuit against the TMD alleging its current funding – like the previous expansion plan – is an illegal tax. The two sides could ultimately settle that lawsuit as part of a compromise that brings the two sides together.

The convention center annex that the Citizens Plan proposes would also give the Chargers an opportunity to build a stadium on top of or adjacent to the facility, sharing land and infrastructure costs by combining the projects.

The Chargers' own stadium plan proposes the same arrangement. But the Chargers plan guarantees at least $350 million in public funds to pay specifically for the stadium portion.

(The Chargers released renderings of their proposed stadium design last week. The design includes a retractable roof and "sky garden" and is meant to be aesthetically sensitive to the neighborhood. "We want it to feel like a building that has been there for a long time, like a natural evolution of the downtown architecture," architect David Molina told the San Diego Union-Tribune.)

The Citizens Plan would make the needed zoning changes and entitle the property so it could become a sports and entertainment complex, and it also stipulates certain environmental mitigation measures that would be required. The property is owned primarily by the city, which operates it as a parking lot for the Padres, and by the Metropolitan Transit Systems, which uses it as a bus yard.

While the hotel tax could pay for the convention center, the Citizens Plan restricts public funds from going to the stadium, unless there's an additional vote. Public funds would cover the convention center portion of a building, but the Chargers would need to build the stadium on top of it.

A sizable portion of San Diego has consistently opposed public funding for a new Chargers stadium. In early January, 50 percent of respondents to a *San Diego Union-Tribune* poll opposed a previous plan that would have spent $350 million in public funds on a stadium. A year earlier, another poll found 41 percent of voters opposed a similar idea.

Meanwhile, another strain of opposition has cropped up. A group of architects and developers active in downtown San Diego says the project would be bad for the continued progress of East Village, the neighborhood where it would be built. The area is already undergoing redevelopment, with numerous projects in progress and in the pipeline. The group's stated goal is to promote development that would create high-paying jobs that could be filled by the many residents moving into the apartment and condo projects already coming out of the ground.

David Malmuth, who is developing a nearby commercial cluster coined the IDEA District, said at a recent meeting the land needs to be filled by buildings with a scale and orientation that connects with the rest of the community.

– CONTINUED ON PAGE 16

San Diego Considers Dueling Plans to Finance Stadium, Convention Center

– CONTINUED FROM PAGE 15

"Stadiums are inward-facing, they create giant walls that shut off communities," he said. "They just aren't friendly neighbors in an urban setting, and that's why people don't usually build them there."

"This is the last significant piece of land in downtown San Diego to be developed," said Beth Callender, principal at marketing firm Greenhaus, and chair of the Urban Land Institute's community development gold council.

"Counting on a significant tax increase to fund the construction of this plan, while also reducing marketing and promotional investments, will affect our ability to compete with other markets for tourists and conventions," said fellow Republican Councilman Chris Cate.

Initially the Chargers ownership said it liked the Citizens Plan[JS1] , but stopped short of endorsing it. In late March, the team closed the door on joining Briggs' initiative when it released its own plan – one that could compete with the Citizens Plan for voter support.

The Chargers' plan would increase taxes to 16.5 percent to cover most of the cost of a joint-use facility. The Chargers and NFL would cover $650 million of a $1.8 billion convention center-stadium. Public officials in the city quickly panned the idea.

"Once again, it appears the Chargers have chosen the path of most resistance," said Republican Councilman Scott Sherman, who had pushed for a new stadium at the site of the existing Qualcomm Stadium. "At first glance, I am not encouraged."

"Counting on a significant tax increase to fund the construction of this plan, while also reducing marketing and promotional investments, will affect our ability to compete with other markets for tourists and conventions," said fellow Republican Councilman Chris Cate.

Briggs and the Chargers met in April, raising suspicion they could come to a deal and push a single measure. Briggs later said that wouldn't happen.

He did, however, announce that he had settled with the TMD over his lawsuit against the group's current funding. One term of that settlement, he said, was that the board would endorse the Citizens Plan. The TMD later said it was in productive negotiations but no settlement was finalized.

TMD support of the Citizens Plan would be a major boost to its electoral prospects. The hotel industry is among the most influential in San Diego politics and is closely aligned with Faulconer.

This all came a day after San Diego City Attorney Jan Goldsmith issued his legal memo saying the Citizens Plan was full of legal issues.

He listed a number of problems, but emphasized issues he had with what he called a "poison pill provision," which says that if any one element of the law is found to be illegal, the entire initiative is null and void.

"This is a very unusual provision," Goldsmith wrote. "An initiative would typically state just the opposite to ensure that all of its terms are not jeopardized by one legal issue."

Briggs said that's by design. The plan is a compromise. Making the whole plan contingent on everything else is an assurance so no single group buys into the plan only to lose their favored piece of it. It is a grand bargain, so it's either all or nothing. Briggs also says the plan polls well with the public; others have suggested its complexity could turn off voters.

– CONTINUED ON PAGE 17

>>> San Diego Considers Dueling Plans to Finance Stadium, Convention Center

– CONTINUED FROM PAGE 16

Everything Else

The Citizens Plan makes a lot of changes to downtown San Diego and the local hotel industry, but it also has big ideas for the site of Qualcomm Stadium, the Chargers' current home in Mission Valley.

The plan would designate a large portion it to a park along the San Diego River. The city has a plan to revitalize the entire river, and approval of the Citizens Plan would require that the 22-acre portion of the stadium site situated on the river is preserved for that use.

Voter approval of the Citizens Plan would entitle the rest of the property to be used as university, as a potential expansion for SDSU or University of California, San Diego. It would explicitly give the city the option of selling the land for university expansion.

Last week, SDSU President Elliot Hirshman broke his silence and endorsed the idea of building an "SDSU West" campus in a blog post, though he didn't specifically endorse the Citizens Plan.

The same day, representatives from JMI Realty – a company founded by former Padres owner John Moores, which is developing a hotel on land next to the envisioned stadium-convention center site – presented their plansfor the 166-acre university expansion. It would include housing for students and faculty, research space for the university, a hotel, commercial and retail space and park area.

It could also include a smaller stadium for SDSU's football team – or a potential Major League Soccer expansion franchise.

Contacts & Resources

Cory Briggs, Briggs Law Corp, cory@briggslawcorp.com

David Malmuth, I.D.E.A. Partners, david@ideadistrictsd.com

Rebecca Kelley, Spokesperson, Councilman Chris Cate, rkelley@sandiego.gov

Fred Maas, Special Projects Director, San Diego Chargers, fredmaas@pgc.bz

Gerry Braun, Spokesman, City Attorney Jan Goldsmith, Gbraun@sandiego.gov

Marlee Ehrenfeld, Spokesman, Tourism Marketing District, marlee@mjemarketing.com

Jeff Powell, Spokesman, Councilman Scott Sherman, jpowell@sandiego.gov ■

insight WILLIAM FULTON

>>> Will Medical Marijuana Cases Drive Land Use Law From Now On?

– CONTINUED FROM PAGE 1

ideological grounds.

But the fact of the matter is that the controversy over access to medical marijuana could soon become a driving force in shaping policy around the state on land use and ballot measures. The reason is goes something like this: Because most local medical marijuana regulation amounts to zoning, that means most medical marijuana disputes are land-use disputes. And because the battle is so intense, neither side gives up easily, so the disputes are more likely to go to the ballot and wind up in appellate court.

Local governments that want to ban dispensaries so desperately they'll stretch the law to do it, and a medical marijuana community so desperate to avoid regulation that they'll fight back hard in court

Just in the last month, appellate courts in California have issued four different published rulings having to do with medical marijuana. Curiously, all four came from inland California, including three from the Inland Empire and one from Kern County.

All had to do with land use and ballot measures. And although neither side has swept the decisions, it's clear that there is a strong temptation on the part of the local governments in particular to engage in heavy manipulation in order to keep medical marijuana dispensaries out of their jurisdiction. That's likely to make important law on both land use and ballot measures, and not in a way that makes it easier to regulate dispensaries.

The four cases represent an interconnected swirl of issues around zoning, initiatives, and the California Environmental Quality Act. Here they are:

* In *City of Palm Springs v. Luna Crest Inc.*, a dispensary opened without seeking city permits and argued that federal law (which, remember, outlaws marijuana) pre-empts local regulations. The Fourth District Court of Appeal said no.

* In *California Cannabis Coalition v. City of Upland*, the Fourth District ruled that Proposition 218 doesn't apply to an initiative to overturn the city's ban on medical marijuana. The case had to do with the timing of the election, but it could have broad implications for a two-thirds vote requirement.

* In a second case from Upland, *Union of Medical Marijuana Patients v. City of Upland,* the Fourth District ruled that the city's codification of an ordinance banning mobile dispensaries was not subject to the California Environmental Quality Act because the city did a CEQA analysis on the previous ordinance.

* Most recently, in a complicated case from Kern County, County of Kern v. TCEF Inc., the Fifth District Court of Appeal ruled that the county had impermissibly undercut a pending referendum that would have overturned a dispensary ban by repealing the ordinance the referendum had targeted – but also repealing the previous ordinance that the referendum sought to reinstate. The case had a CEQA angle too, because an alternative measure placed on the ballot to counteract the referendum had previously been invalidated because the county didn't follow CEQA in putting the measure together.

You can see what's going on here: Local governments that want to ban dispensaries so desperately they'll stretch the law to do it, and a medical marijuana community so desperate to avoid regulation that they'll fight back hard in court – and, in some cases, make far-fetched legal arguments – to try to stop them.

In the federal pre-emption case, for example, the plaintiffs argued that federal law does not permit local governments to adopt an ordinance requiring dispensaries to subject themselves to testing of some marijuana products – which is not surprising, considering that marijuana possession is

– CONTINUED ON PAGE 19

insight WILLIAM FULTON

>>> Will Medical Marijuana Cases Drive Land Use Law From Now On?

– CONTINUED FROM PAGE 18

illegal under federal law.

In the Upland CEQA case, the plaintiffs argued that the city had the obligation to examine the traffic impacts of a mobile dispensary ban, including, among other things, the increased traffic due to the fact that medical marijuana patients would have to drive to other cities to obtain marijuana and the possibility that more personal growing would lead to pollution. The court said these arguments were too speculative.

The Kern County case was the one in which the local government – which, alone among all these cases, was the plaintiff – stretched the limits of its actions. The sequence of events went something like this: The county adopted an ordinance requiring the sheriff's approval; then replaced it with an ordinance permitting dispensaries in commercial areas; then, after 30 dispensaries opened, replaced that with a prohibition. Then local activists qualified a referendum to overturn the prohibition. At that point, the county repealed both the ban and the previous ordinance permitting operation in commercial areas and also placed a measure on the ballot to permit dispensaries in industrial zones only. The ballot measure passed but was subsequent invalidated on the CEQA argument. (An initiative is exempt from CEQA, but a ballot measure cooked up by elected officials isn't.) Then, with the ordinance permitting dispensaries in commercial zones repealed, the county sued a dispensary operating in a commercial zone. Which won the case on appeal.

So, thanks to the recent appellate cases, we now know that you can't require a CEQA analysis based on extremely speculative possible impacts; an initiative isn't subject to the two-thirds voter approval requirement and other provisions of Proposition 218; and if you rescind an ordinance in response to a referendum you can't essentially reinstate that ordinance afterward.

Crafting any ordinance on a controversial issue is a complicated balancing act, and you can see in that each of these cases it wasn't easy to find the right balance. In Palm Springs – a city where registered Democrats outnumber registered Republicans two to one – the city allowed dispensaries but tried to put safeguards on them. In Kern County – where social conservatives live alongside libertarians – the Board of Supervisors couldn't figure out what to do at first. But, faced with 30 dispensaries once they were let in, the county engaged in a desperate attempt to get rid of them and keep them out – which put them on the wrong side of the Court of Appeal ruling. One thing about the medical marijuana cases: They reveal a lot of ugly sausage-making.

And this is probably just the beginning. And, by the way, none of the medical marijuana advocates were represented by lawyers with experience in appellate land use law – with the exception of the California Cannabis Coalition in Uland, which was represented by Roger Jon Diamond, who has done battle against local governments for decades on behalf of the adult business industry. So who knows where the next case is coming from, and which lawyers are going to be involved? ■

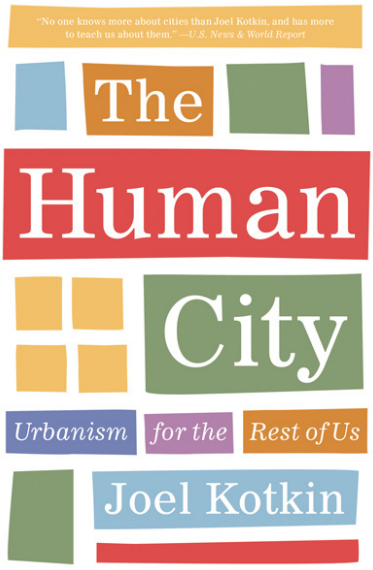
From the Blog: Fetishizing Families

I would like to buy Joel Kotkin a beer. I vote we try a gastropub downtown. Or maybe a rooftop lounge. I'll take the subway, and he can take a taxi. That way, neither of us has to drive.

Wherever we'd go, I'd like to invite some of my urban planner friends along. That's because, judging by his new book, "The Human City: Urbanism for the Rest of Us," Kotkin may never have met a planner before.

According to Kotkin, planners today are "largely in favor of cramming people into ever-denser spaces." Kotkin describes contemporary planning trends so you can smell the body odor: "people clustering in ever more crowded cities, living atop each other, may fulfill the ambitions of corporate leaders, urbanist visionaries, and planners."

Kotkin has long been a contrarian and critic of contemporary planning — sometimes a perceptive and welcome one, especially when urbanists, myself included, have gotten too cute or too smug. "The Human City" is probably his most comprehensive critique and surely his most off-putting.



Normally, provocative claims that form the basis of an entire book would warrant extensive citations, surveys, data, quotations, interviews, analysis, and literature reviews. Kotkin alludes to "scores of interviews and… survey data" but reports none of it but for occasional factoids. By keeping them "anonymous," Kotkin gets to mischaracterize planners and crusade against nonexistent threats.

Kotkin digs at "creative class" theorist Richard Florida for being a "retro-urbanist" (whatever that means), and credits New Urbanists for favoring "a somewhat human scale." Most surreally, though, Kotkin suggests that the theories of early 20th century visionary Le Corbusier "are widely shared…by many urban thinkers today," as if everyone still wants to build towers in parks. That's what they were doing in the 1960s. In fact, legions of planners have been working for decades, by promoting infill and the like, to undo the damage that the Corbusians did. That damage has little to do with density per se; it has to do with the evisceration of street life.

"The Human City" mainly concerns American cities, though it takes an early one-chapter detour into "megacities" of the developing world. This enables Kotkin to introduce a terrifying statistic: Dharavi, the densest slum in Mumbai, has 1 million people per square mile. Kotkin presents this as a cautionary tale, never blinking in his accusation that planners in the United States view Dharavi as a model. Never mind that Dharavi is an illegal settlement on nobody's blueprint.

You'd have to be a serious antigovernment fanatic to think that any bureaucrat would favor that kind of cityscape. You'd also have to be terrible at math. If the entire population of the United States crammed within the city limits of Los Angeles, they still wouldn't achieve 1 million people per square mile. (Especially not with all the botox.) Interestingly, the density of Mumbai as a whole is roughly equal to that of New York City as a whole, at roughly 28,000 people per square kilometer.

And yet, Kotkin says that "planners" celebrate Dharavi's density. He includes Harvard's Ed Glaeser, who is actually not a planner but an economist and the kind of free-market thinker about cities that Kotkin ought to like. Kotkin doesn't actually quote Glaeser directly, though, so I emailed Glaeser. Glaeser confirmed that he believes in the economic potential of megacities. Kotkin just left out the part about how Glaeser "warn(s) of their dangers – the demons of density."

As a gradient and not an absolute, density is relative. It's not like we have to choose only between formless void and

– CONTINUED ON PAGE 21

From the Blog: Fetishizing Families

– CONTINUED FROM PAGE 20

black hole. To favor greater density in, say, Kansas City (1,474 people per square mile, in the center city, or one-tenth of 1% of Dharavi,) or Jacksonville (1,142) means favoring "greater than what is already in Kansas City or Jacksonville." It doesn't mean "greater than Mumbai." (Kotkin proposes a breezy solution for India: it should develop its mid-sized cities. That's a swell plan, except that it ignores the ultra-corrupt, hyper-bureaucratic entity known as The Government of India.)

But enough of the developing world. "The Human City" mentions it mainly to scare the bejesus out of "us" and make us thankful for America's abundance of bedroom communities.

The "us" in Kotkin's divisive title refers to nuclear families: husbands and wives who dutifully bear sons and daughters. They are, claims Kotkin, the ones whom cities ought to serve. They have no use for monumental statements like towers and superblocks nor for fripperies like parklets, bike lanes, street festivals, and loft conversions. And they certainly don't want their children having to share personal space with "them," whoever "they" may be.

Families are people too, though. It's not unreasonable to claim, "the question of what families need and prefer should be central." But Kotkin explores this question only as far as his preconceptions will let him.

In asserting the preferences of some 122 million people (including many children who probably had no say in the matter), Kotkin makes no effort to distinguish desire from resignation. The status quo does not tell us whether they "want" to live in suburbs or whether they are merely willing to do so because that's where most housing units have been built over the last century.

Kotkin's veneration of the suburbs centers on three reasons: typology, typology, typology. Kotkin insists that families inherently prefer a "small home in a modest neighborhood…where children can be raised." Adorable, right? To hear Kotkin tell it, a house in bankrupt San Bernardino is always more family-friendly than an apartment in booming Koreatown. I'm sure that's true for some parents. Others are happy for their kids to have ready access to culture, mobility, astounding diversity, and neighbors who are less likely to be cooking meth in their garages.

In writing about suburbs, Kotkin is at his most appealing and most convincing when he's describing their hidden diversity or celebrating the small businesses that thrive there. He rightly points out that, with the dispersion of job centers, it's not all hour-long commutes on clogged highways. Meanwhile, he also has a legitimate critique of some progressive cities that "are actually becoming whiter and less ethnically diverse as the rest of the country, particularly suburbia, diversifies." He's also written perceptively on America's coming population growth.

Kotkin undermines these observations by concocting a rivalry between suburbs and center cities – going so far as to proclaim "the war against suburbia" -- and by equating suburban living with families while equating center cities with hipsters, singles, the wealthy, and the foreign wealthy. (He scarcely mentions the urban poor, many of whom also are families.)

These are the inhabitants of cities that Kotkin calls, variously, consumer cities, legacy cities, elite cities, and, most damning of all, "luxury cities." Kotkin cites compelling demographic data indicating that in some of these cities — especially San Francisco and Manhattan — children are disappearing from the census data. Luxury cities are too expensive for families and, of course, they're too darn crowded.

For a free-market guy, it's odd how Kotkin ignores the true meaning of high real estate prices: that demand is outstripping supply. Believe it or not, a great many people, families and singles alike, "want" to live in Los Angeles, Seattle, San Francisco, Washington, D.C., and New York City.

If high prices are bad and density is bad, cities are in quite a pickle, aren't they?

Kotkin clearly thinks that cities shouldn't build more high-rises and other multifamily dwellings. Of course, plenty of cities can accommodate more suburban-style houses, which is fine. But they aren't the cities that Kotkin is concerned about.

– CONTINUED ON PAGE 22

From the Blog: Fetishizing Families

– CONTINUED FROM PAGE 21

He willfully ignores the predicament that the highly desirable like New York, San Francisco, and even Los Angeles are facing: They have basically no undeveloped land. Either they build multifamily or they build nothing at all. Kotkin imposes on them an impossible choice – and blames planners for failing to sort it out.

Planners in center cities focus on downtowns, multifamily housing, commercial pockets, and certain amenities because, well, that's what they have to work with. Density is what a city *is* – especially "luxury cities." Being for or against density is a silly question. Managing density and making it work, for families and everyone else, is the real question.

In truth, a suburban preference doesn't necessarily connote a preference for suburbs; it connotes a preference for things that suburbs tend to offer. No matter their densities, cities can, if they try hard enough, meet suburbs halfway, with better schools; affordability (per unit if not per square foot); safety (unban crime is generally down); and even "community" – as long as your definition of "community" doesn't equate only with "middle class white people." Americans might prefer suburbs less if they had more great cities from which to choose.

Kotkin writes, "Urbanists would be far better off if they considered taking a more human-city approach: improve life not only in the core, but in the extensive areas that have developed around them." First, there's a contradiction here: if the suburbs are so great – such that families should always choose them over cities – then what exactly would make them "better off"? Second, Kotkin is entertaining another fantasy: he implies that we need to eliminate jurisdictions, hire region-wide planning directors, and give each of them enormous magic wands.

Many center cities are dysfunctional precisely because they have been competing with suburbs for decades — for population, development, jobs, and, of course, tax dollars. The suburbs have been winning by a landslide. As Kotkin points out, "between 2001 and 2011, detached houses accounted for 83 percent of the net additions to the occupied U.S. housing stock." Whether composed of palatial dream homes or acres of ticky-tack, the suburbs have prevailed for decades. So what, exactly, is Kotkin complaining about?

Really, Kotkin isn't complaining so much as he is pandering.

Kotkin could be part of the solution rather than part of the problem. Instead, he has written a dog whistle to the supporters and consumers of sprawl. In fairness, Kotkin admits that "we need both geographies." It's just an odd thing to say at the end of a book largely bashing one of those geographies.

If Kotkin likes families so much, he should love urban cores. He should love shaded sidewalks where people can catch each other's eyes. He should love bars where they buy each other drinks and share Instagram handles. He should love small apartments to which they can stroll arm-in-arm. If, a few years later, those same couples need another bedroom….well, good for them.

And if those bars are too "crowded" with young singles for Kotkin's liking, I'll grab some friends and we'll drive out to Applebee's. The Diet Cokes are on me.

The Human City: Urbanism for the Rest of Us

Joel Kotkin

Agate B2 Publishing

304 pages

$18.76

April 12, 2016

– JOSH STEPHENS | APRIL 4, 2016 ■