SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/13/2018 TIME: 10:45:00 AM DEPT: C-68

JUDICIAL OFFICER PRESIDING: Judith F. Hayes
CLERK: Richard Cersosimo
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2015-00014540-CU-MC-CTL** CASE INIT.DATE: 04/30/2015
CASE TITLE: **Jesse Willard Mahon Jr vs. City of San Diego [E-FILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 07/27/2018 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court, having taken the above-entitled matter under submission on 07/27/2018 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

(1) Defendant's Motion for Summary Judgment, or in the Alternative, Motion for Summary Adjudication is GRANTED.

"Proposition 218 added articles XIII C and XIII D to the California Constitution." (*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637, 640.) Under articles XIII C and XIII D of the California Constitution, a local government may not impose, extend, or increase any tax unless or until that tax is submitted to the electorate and approved by voters. (Cal. Const. art. XIII C, § 2, subds. (b) and (d).) It is undisputed that the surcharge at issue was not approved by voters.

The City does not cite any authorities that are directly on point to challenge Plaintiffs' standing. The City cites *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035. *Torres* does not directly apply in this case because it does not concern Civil Code of Procedure section 863 standing. The California Supreme Court has held that retailers are the taxpayers for purposes of sales tax. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1103-04.) The California Supreme Court reached this conclusion after analyzing specific relevant tax code sections not at issue here. The surcharge is not a sales tax. Further, both parties cite to *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248 in discussing standing, but the California Supreme Court did not address standing issues in that case.

The Court finds the Plaintiffs have standing because the ratepayers are the persons bearing the economic burden by virtue of the fact SDG&E is permitted to pass the cost onto ratepayers. The ratepayers would benefit from a tax refund if the surcharge is found to be a tax and that SDG&E is merely a tax collector.

The surcharge is not a tax if it is compensation for franchise rights. (*Jacks, supra,* 3 Cal.5th at 267.) "[T]o constitute compensation for the value received, the fees must reflect a reasonable estimate of the value of the franchise." (*Id*.) "To constitute compensation for a property interest, however, the amount of the charge must bear a reasonable relationship to the value of the property interest; to the extent the charge exceeds any reasonable value of the interest, it is a tax and therefore requires voter approval." (*Id*. at 254.)

A city ordinance is the equivalent of a statute such that rules of statutory construction and interpretation apply. (*Howard Jarvis Taxpayers Assn. v. County of Orange* (2003) 110 Cal.App.4th 1375, 1388; see *Castaneda v. Holcomb* (1981) 114 Cal.App.3d 939, 939–942.)

When construing any statute, "our goal is ' "to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law." ' " (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 919, 76 Cal.Rptr.3d 483, 182 P.3d 1027.) "When the language of a statute is clear, we need go no further." (*People v. Flores* (2003) 30 Cal.4th 1059, 1063, 135 Cal.Rptr.2d 63, 69 P.3d 979.) But where a statute's terms are unclear or ambiguous, we may "look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1008, 239 Cal.Rptr. 656, 741 P.2d 154; see also *Catlin v. Superior Court* (2011) 51 Cal.4th 300, 304, 120 Cal.Rptr.3d 135, 245 P.3d 860; *People v. Canty* (2004) 32 Cal.4th 1266, 1277, 14 Cal.Rptr.3d 1, 90 P.3d 1168.)

(*In re M.M.* (2012) 54 Cal.4th 530, 536.)

Plaintiffs contend that the only compensation for the franchise is the 3% of gross receipts provided for in Section 4 of Ordinance No. 10466. Section 4 is titled "CONSIDERATION" and does not mention the allocation of funds; however, Ordinance No. 10466 provides in Section 9(a) that "Grantee is willing to increase the amounts of money budgeted for said program and as a portion of the consideration for the granting of the rights and privileges contained in this franchise shall accomplish this in the following manner." (City's NOL Ex. 32.) Section 3 states that the franchise is granted subject to "all of the terms and conditions contained in this ordinance." (*Id*.) Section 9(b) of the ordinance contains the obligation to allocate 4.5% of receipts to undergrounding and Section 9(e) explicitly states "[t]his section is intended only to be a measure of a portion of the consideration to be paid by Grantee to City for the rights and privileges granted herein." (*Id*.) Finally, Section 12 states "[t]his franchise is granted upon each and every condition herein contained..." (*Id*.) Ordinance No. 10466 makes clear that the consideration for the franchise rights includes more than the 3% of gross receipts provided for in Section 4.

Ordinance 0-19030 amended the franchise agreement in Ordinance No. 10466. (Plaintiffs' NOL Ex. 5, pgs.149-154.) While Ordinance 0-19030 amended Sections 4(b) through (h) and 9(b) and (c), it did not amend Sections 3, 9(e), and 12, which by their terms include "as a portion of the consideration" for the franchise the allocation of funds for undergrounding. Ordinance 0-19030 amended Section 9(b) to specify that 3.53% of the Electric Franchise Fee Surcharge "will be allocated to undergrounding projects." (Plaintiffs' NOL Ex. 5, pg.153.) This specification does not change the fact it was agreed in Ordinance No. 10466 that the allocation of funds was considered "a portion of the consideration to be paid" for the franchise. (City's NOL Ex. 32.)

Plaintiffs also assert the allocation of funds may not constitute compensation paid to the City for franchise rights. The California Supreme Court does not directly address in *Jacks* what may constitute

"compensation for the value received," but the Court discusses that the fee, to be a franchise fee that is not a tax, "must reflect a reasonable estimate of the value of the franchise." (*Jacks, supra,* 3 Cal.5th at 267.) The Court did not limit what could constitute compensation to a dollar figure. The Court broadly described a fee qualifying as a franchise fee as a "charge on the recipient to compensate the public for the value received." (*Id*.) The Court, in discussing the history of enactments to regulate franchise fees, recognized that statutory provisions limiting how franchise fees could be calculated did "not bind jurisdictions governed by a charter, such as the City." (*Id*. at 265.) The Court also stated "sums paid for the right to use a jurisdiction's rights-of-way are fees rather than taxes." (*Id*. at 267.) The Court, in concluding "the fees must reflect a reasonable estimate of the value of the franchise," was clearly concerned with determining the purpose of the "fee" was to compensate for the use of an asset rather than for the purpose of generating revenue or compensation for a cost. (*Id*. at 267-269.) While the City is limited in requiring a franchise fee that exceeds the reasonable value of the franchise rights, *Jacks* does not limit how that fee is calculated and charged.

Plaintiffs cite *Time Warner Cable Inc. v. County of Los Angeles* (Cal. Ct. App., July 19, 2018, No. B270062) 2018 WL 3471088 for the proposition that the City was limited in how it could calculate the value of a franchise. In *Time Warner* the court considered the method for valuing the possessory interest granted to a cable television operator via franchise for purposes of taxing that interest. (*Time Warner Cable Inc. v. County of Los Angeles* (Cal. Ct. App., July 19, 2018, No. B270062) 2018 WL 3471088, at *3.) Plaintiffs essentially assert *Time Warner*'s reference to the three methods identified in Revenue and Taxation Code section 107.7, which specifically addresses valuation of cable television and video service possessory interests, must apply to this case to determine whether the surcharge was a tax. (*Id*.; Rev. & Tax. Code, § 107.7.) *Time Warner* does not purport to limit *Jacks* in how the compensation for a franchise is determined. *Time Warner* was concerned with an assessor's tax on the franchise, not whether the any portion of compensation for the franchise was actually a tax. *Time Warner* does not limit the methods that may be used to determine whether, under *Jacks*, the franchise fee exceeds the reasonable value of the franchise rights.

Here, SDG&E collects the 3.53% surcharge and remits it to the City to be used "solely for undergrounding projects." (Plaintiff's NOL Ex. 5, pgs. 64 and 66.) The relevant ordinances themselves do not state that a certain percentage of the 4.5% allocation must be remitted to the City or that any particular amount must be spent on undergrounding. It is the 2001 MOU that provides this specification. Under Ordinance No. 10466, under restrictive circumstances, SDG&E was permitted to "reallocate the unexpended amounts of money, in its discretion, for any other lawful purpose" when it did not expend budgeted amounts "because of forces beyond the control of [SDG&E]." (Plaintiff's NOL Ex. 5, pg. 132.) While the 2001 MOU specifies a percentage of the allocated 4.5% of gross receipts must be remitted to the City for undergrounding projects whereas Ordinance No. 10466 left open the possibility that allocated funds would not be used on undergrounding under certain circumstances, it does not mean Ordinance No. 10466 or Ordinance 0-19030 are ambiguous regarding the franchise fee. The City is being compensated, in part, by an allocation of funds to be used for undergrounding projects. While there was a possibility the budgeted amounts would not be entirely spent on undergrounding, it does not mean that the City was not compensated by such allocations of funds.

The City adopted Policy No. 600-08 ("Policy 600-08") and the Underground Utilities Procedural Ordinance ("UUP Ordinance") to establish the City's policy and program for undergrounding. The UUP Ordinance allows City Council to create underground utility districts ("UUD") and order the removal of overhead lines in a UUD by a date certain when it is in the interest of public health, safety or general welfare. (City's UF 148-156.) The City, in considering compensation it wished to receive, could properly seek ways to fulfill the purposes of the UUP Ordinance. Under *Jacks*, "revenue generated by the

[franchise] fee is available for whatever purposes the government chooses rather than tied to a public cost." (*Jacks, supra,* 3 Cal.5th at 268.) The fact the allocation of funds is not the same as actual payment of funds is not dispositive on the issue of whether it is compensation. The difference merely affects the determination of the valuation of the compensation rather than the determination of whether it is intended as compensation. The Court finds allocations of funds for a purpose that serves the City's policies, as it does here, may properly constitute compensation.

Section 4 of the ordinances both identify as consideration and compensation for use of the City streets the 3% of gross receipts amount. In section 9 of Ordinance No. 10466, the use of the word "compensation" is not repeated. Plaintiffs assert this has some legal significance. There is no legal difference between the terms consideration and compensation in this context. To induce the City to grant SDG&E the franchise rights, the City accepted SDG&E's commitment to budget funds for undergrounding. It is part of consideration for the contract and it compensates the City by assisting in the effort to underground according to the UUP Ordinance and Policy 600-08. The term compensation may be used in contexts outside of contracts; whereas, the term consideration is legally significant in the contractual context. Both terms mean compensation in the context of granting a franchise right, a contractual agreement. Consideration is the compensation for the bargained for exchange. If the consideration did not compensate in any way, then the contract would be illusory. The franchise agreement would not be illusory if the only consideration were the budgeting of funds for undergrounding. Thus, the budgeting is both consideration and compensation. The terms are interchangeable in this context.

The Court in *Jacks* recognized "that determining the value of a franchise may present difficulties." (*Jacks, supra,* 3 Cal.5th at 269.) "Where a utility has an incentive to negotiate a lower fee, the negotiated fee may reflect the value of the franchise rights, just as the negotiated rent paid by the lessor of a publicly owned building reflects its market value, despite the fact that a different lessor might have negotiated a different rental rate." (*Id*. at 269–270.) If there is an absence of "bona fide negotiations," or in addition to such negotiations, "an agency may look to other indicia of value to establish a reasonable value of franchise rights." (*Id*. at 270.) Plaintiffs do not dispute that bona fide negotiations took place or that the value of the compensation in Ordinance No. 10466 or Ordinance 0-19030 exceed the reasonable value of the franchise rights. Plaintiffs merely assert it is not compensation.

Plaintiffs also assert treatment of the 3.53% surcharge as compensation would violate City Charter, article VII, section 105, which states, in relevant part, "Franchises may be granted upon such terms, conditions, restrictions or limitations as may be prescribed by ordinance. Every ordinance granting a franchise shall provide that the grantee therein named, as consideration for such grant, shall pay compensation to the City in an amount and in the manner set forth in said ordinance." (Plaintiff's NOL Ex. 12.) As discussed above, Ordinance No. 10466 and Ordinance 0-19030 describe compensation for the franchise rights. While a charter is a "limitation and restriction on the exercise of power over all municipal affairs which the city is assumed to possess," "[c]harter provisions are construed in favor of the exercise of the power over municipal affairs and 'against the existence of any limitation or restriction thereon which is not expressly stated in the charter.'" (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170–171 [Citation omitted].) The City Charter does not state compensation is limited to payment of funds or to a description of payment that only involves funds. It is undisputed that Ordinance No. 10466 and Ordinance 0-19030 describe consideration and payment thereof as to the 3%. Ordinance No. 10466 and Ordinance 0-19030 also describe a form of compensation – allocation of a percentage of gross receipts to funding undergrounding. Ordinance No. 10466 and Ordinance 0-19030 also describe how the allocation must be made, conditions on the allocations, and the purpose for it. This is the equivalent of describing a manner of payment. Treating the surcharge as partial compensation for the

franchise rights does not violate City Charter, article VII, section 105.

Plaintiffs further assert the City has not treated the surcharge as franchise compensation because the City fails to treat it as franchise revenue by depositing 25% of franchise compensation into the City's Environmental Growth Fund ("EGF"). The City Charter, article VII, section 103.1a provides the City must deposit 25% of franchise compensation into the EGF. The City does not dispute that it fails to do so. However, even if Plaintiffs' challenge to City's failure to deposit the funds into the EGF were properly before the Court as relevant to the issue of whether the surcharge is compensation for franchise rights, the funds from the surcharge are used for undergrounding projects that may qualify as a use that preserves and enhances the environment of the City of San Diego. (See Plaintiff's UF 346.) Ordering the City to deposit 25% of the franchise compensation in the EGF would be a futile act as the City has already determined it will spend all of the surcharge funds on qualifying projects under City Charter, article VII, section 103.1a.

"Opinion evidence about the meaning of a statute, whether from a lay person or a purported expert, has long been held inadmissible." (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1179.) It is an established rule of statutory construction that "the testimony of an individual legislator as to his intention, motive or opinion with regard to a particular piece of legislation is inadmissible." (*City of Los Angeles v. Superior Court* (1985) 170 Cal.App.3d 744, 752.) Whether or not a City Manager's Report or City Council Meeting Minutes referred to the surcharge as something other than a franchise fee is not admissible to interpret the ordinances. The ordinances unambiguously state the surcharge are part of the compensation for the franchise rights. As such, the surcharge is not a tax.

In summary, the Court finds that Ordinance No. 10466 and Ordinance 0-19030 are not ambiguous. They clearly identify the allocation of funds "as a portion of the consideration for" the franchise rights. The allocation of funds properly constitutes a portion of the compensation for the franchise rights.

Alternatively, the surcharge portion of the undergrounding obligation that SDG&E pays to the City is a regulatory fee. The California Supreme Court identified the characteristics of a legitimate regulatory fee in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866. The "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged." (*Id.* at 876 [Citation omitted].) They are not levied for unrelated revenue purposes. (*Id*.) The amount of the fees should bear a reasonable relationship to the social or economic burdens that the operations generate. (*Id*.) "[T]here must be a nexus between the amount of the fee and the cost of the service for which the fee is charged." (*California Building Industry Assn. v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 132.) The "police power is broad enough to include mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations" where the measure requires a causal connection to the adverse effect. (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 877–878.) Further, fees imposed for past conduct is permitted as a regulatory fee even when the dangers to be regulated were unknown at the time. (*California Assn. of Professional Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 947.) Regulatory fees may be legitimate "despite the absence of any perceived 'benefit' accruing to the fee payers." (*Sinclair, supra,* 15 Cal.4th at 876 [citation omitted].) The City must prove by a preponderance of the evidence that the regulatory fee is not a tax. (Cal. Const., art. 13C, § 1.)

Plaintiffs do not dispute that the surcharge or total undergrounding obligation do not exceed the costs to complete the undergrounding. The undergrounding program is a regulatory activity. It is undisputed that the City adopted Policy 600-08 and the UUP Ordinance in response to the PUC's Decision 73078 regarding undergrounding, to implement more undergrounding. (City's UF 141-156.) The City uses the

surcharge funds specifically for the undergrounding program. The undergrounding program is implemented pursuant to the City's police power. (City's UF 141-156.) The undergrounding of utility lines is performed "in the interest of the public health, safety and welfare" and is to be completed, for example, where it will "eliminate an unusually heavy concentration of overhead distribution facilities" and where there is "a heavy volume of pedestrian or vehicular traffic." (City's UF 142.) SDG&E may decrease or eliminate the required payment of the surcharge by scaling back or eliminating its operations in San Diego. Further, the surcharge is properly aimed at correcting an adverse effect from past operations – the dangers and negative aesthetics from above-ground utility lines.

The requirement that the amount of the fees bear a reasonable relationship to the social or economic burdens that the operations generate may be satisfied "by evidence showing [] that the fees will generate substantially less than the anticipated costs." (*City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 283.) While Plaintiffs dispute the interpretation of some of the City's evidence, Plaintiffs do not dispute that at the current rate the undergrounding program will cost at least $1.6 billion by completion and that the allocating of funds in 2018 has amounted to only $564 million. (City's UF 344.) The surcharge obligation sunsets in 2020. (Plaintiff's response to City's UF 344.) Plaintiffs do not dispute that at the current pace and funding level it will take another 66 years to complete undergrounding. (City's UF 344.) Further, in a span of over four years, SDG&E has paid a total of approximately $225 million to the City as part of its undergrounding obligation. (City's UF 344.) If that pace continues through 2020, the amounts paid by SDG&E will fall well short of the amounts needed to complete the undergrounding. (City's UF 344.) In short, the surcharge amount bears a reasonable relationship to the burdens imposed by SDG&E's operations in the City. Plaintiffs have not shown the fees "were designed to generate excess revenue." (*California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1051.)

Plaintiffs assert the PUC's authority to regulate utilities preempts the City's power regulate in this area. The City does not deny the PUC's authority to regulate utilities, but asserts its police power is concurrent and coexistent with the PUC's authority. Pursuant to the California Constitution, the City "may not regulate matters over which the Legislature grants regulatory power to the Commission." (Cal. Const., art. XII, § 8.) However, this does not affect the City's "power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter...." (Cal. Const., art. XII, § 8.) Further, Public Utilities Code section 2902 provides:

This chapter shall not be construed to authorize any municipal corporation to surrender to the commission its powers of control to supervise and **regulate** the relationship between a public utility and the general public in matters affecting the **health, convenience, and safety of the general public**, including matters such as the use and repair of public streets by any public utility, **the location of** the poles, **wires**, mains, **or conduits of any public utility**, on, **under, or above any public streets**, and the speed of common carriers operating within the limits of the municipal corporation.

(Pub. Util. Code, § 2902 [Emphasis added].) The City is not preempted from regulating utilities for purposes of safety. The surcharge paid by SDG&E is a regulatory fee that addresses undergrounding of utility lines – a safety issue. That the City consulted with SDG&E in imposing the surcharge rather than unilaterally imposing it does not change its nature as a regulatory fee.

Plaintiffs also assert the allocating of funds described in Ordinance No. 10466 and Ordinance 0-19030 do not qualify as a regulatory fee as they do not require payment. "The scope of a regulatory fee is somewhat flexible and is related to the overall purposes of the regulatory governmental action." (*California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438.)

The Court considers Policy 600-08, the UUP Ordinance, Ordinance No. 10466, Ordinance 0-19030, and the 2001 MOU to understand the City's regulatory actions. The 2001 MOU obligates SDG&E to remit the surcharge to the City. (Plaintiff's NOL Ex. 5, pg. 66.) The 2001 MOU also obligates SDG&E to spend surcharge funds according to Policy 600-08. (Plaintiff's NOL Ex. 5, pg. 65.) Policy 600-08 and UUP Ordinance evidence the City's intent to regulate utilities using its police power. (City's UF 141-156.)

In short, the undergrounding obligation paid by SDG&E to the City is a regulatory fee.

The City's requests for judicial notice are granted.

Plaintiffs' Objections to Evidence:

Objection 1: Overruled
Objection 2: Overruled
Objection 3: Overruled
Objection 4: Overruled
Objection 5a: Overruled
Objection 5b: Overruled
Objection 6a: Overruled
Objection 6b: Overruled
Objection 7a: Overruled
Objection 7b: Overruled
Objection 8: Overruled
Objection 9: Overruled
Objection 10: Overruled
Objection 11: Overruled
Objection 12: Overruled
Objection 13: Overruled
Objection 14: Overruled
Objection 15: Overruled
Objection 16: Overruled
Objection 17: Overruled
Objection 18a: Overruled
Objection 18b: Overruled
Objection 19a: Overruled
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Objection 20: Overruled
Objection 21: Overruled
Objection 22: Overruled
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Objection 27a: Overruled
Objection 27b: Overruled
Objection 28a: Overruled

Objection 28b: Overruled
Objection 29a: Overruled
Objection 29b: Overruled
Objection 30a: Overruled
Objection 30b: Overruled
Objection 31a: Overruled
Objection 31b: Overruled
Objection 32: Overruled
Objection 33a: Sustained
Objection 33b: Sustained
Objection 34a: Overruled
Objection 34b: Overruled
Objection 35a: Overruled
Objection 35b: Overruled
Objection 36a: Sustained
Objection 36b: Sustained
Objection 37a: Sustained
Objection 37b: Sustained
Objection 38a: Overruled
Objection 38b: Overruled
Objection 39a: Overruled
Objection 39b: Overruled
Objection 40a: Sustained
Objection 40b: Sustained
Objection 41a: Overruled
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Objection 121: Overruled
Objection 122: Overruled
Objection 123: Overruled
Objection 124: Overruled
Objection 125: Overruled
Objection 126: Overruled
Objection 127: Overruled
Objection 128: Sustained

Plaintiffs' Supplemental Objections to Evidence:

Objection 129: Overruled
Objection 130: Overruled
Objection 131: Overruled
Objection 132: Overruled
Objection 133: Overruled
Objection 134: Overruled
Objection 135: Overruled
Objection 136: Overruled
Objection 137: Overruled
Objection 138: Overruled
Objection 139: Overruled
Objection 140: Overruled
Objection 141: Overruled
Objection 142: Overruled
Objection 143: Overruled
Objection 144: Overruled
Objection 145: Overruled
Objection 146: Overruled
Objection 147: Overruled
Objection 148: Overruled
Objection 149: Overruled
Objection 150: Overruled

Defendant's Objections to Evidence:

Objection 1: Overruled
Objection 2: Overruled
Objection 3: Overruled
Objection 4: Overruled
Objection 5: Overruled

Objection 6: Overruled
Objection 7: Overruled
Objection 8: Sustained
Objection 9: Overruled

(2) Plaintiffs' Motion for Summary Judgment or Alternatively Summary Adjudication is MOOT.

For the reasons discussed above, the City's motion is granted, making Plaintiffs' motion moot.

Judge Judith F. Hayes