Filed 1/17/17 City of Malibu v. Kent CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CITY OF MALIBU, Petitioner, Plaintiff and Appellant, v. JENNIFER KENT, et al., Respondents; CHRISS PRENTISS, et al., Real Parties in Interest.	B267162 (Los Angeles County Super. Ct. No. BS154185)

Appeal from a judgment of the Superior Court of Los Angeles County, James. C. Chalfant, Judge. Affirmed.

Jenkins & Hogin, Christi Hogin and Gregg W. Kettles, for Petitioner, Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Kathleen Kenealy, Acting Attorney General, Julie Weng-Gutierrez, Senior Assistant Attorney General, Jennifer M. Kim, Supervising Deputy Attorney General, Kenneth K. Wang, Deputy Attorney General and Donna M. Dean, Deputy Attorney General, for Defendants and Respondents.

Manatt, Phelps & Phillips, Ronald B. Turovsky and Benjamin G. Shatz, for Real Parties in Interest.

The City of Malibu filed a petition for writ of mandate alleging that the California Department of Health Services had unlawfully licensed eight alcoholism and drug abuse treatment facilities to operate on several contiguous parcels of residential property. The City argued that under the applicable licensing statutes, the eight facilities qualified as components of a single "integrated" facility, thereby requiring the Department to issue them a single operating license, rather than eight individual licenses. Alternatively, the City argued the Department was required to revoke the licenses of three facilities operating in structures that were not permitted as single-family residences under the Malibu Municipal Code.

The Department and the licensees of the facilities (acting as the real parties in interest) demurred, arguing that: (1) the City lacked standing to challenge the Department's licensing decisions; (2) the Department had discretion to license each of the eight facilities individually, rather than as a single, integrated facility; and (3) the licensing statutes do not require an alcoholism and drug abuse treatment facility to be located in a single-family residence. The trial court agreed with the defendants on each issue, and sustained the demurrer without leave to amend.

We affirm, concluding that although the City does have standing to challenge the Department's licensing decisions, it has failed to show the Department had a duty to deny or revoke any of the licenses at issue.

FACTUAL BACKGROUND

A. Summary of Events Occurring Prior to the Filing of the City's Complaint

1. Summary of the Passages facilities

"Passages Malibu" is a "sprawling" alcoholism and drug abuse treatment facility located on five contiguous "residential lots" in Malibu, California.[1] The Passages campus includes eight separate residences for its

---

[1] This factual summary is based on allegations in the complaint, which we must accept as true at this stage in the proceedings. (See generally *Gordon v. Law Offices of Aguirre & Meyer* (1999) 70 Cal.App.4th 972, 976 ["On appeal from a judgment of dismissal following the sustaining of a demurrer without leave to amend, the reviewing court must accept as true

guests. Five of the residences are located in structures that are permitted as single-family residences under the City of Malibu's local zoning ordinances, two of the residences are located in structures that are permitted as "guest houses" and one residence is located in a structure that is permitted as a "pool house."

The California Department of Health Services (the Department), which is responsible for licensing alcoholism and drug abuse treatment facilities, individually licensed each of the eight Passages residences to operate a treatment facility serving up to six people.[2] The eight licenses were issued to four different corporate entities affiliated with the Passages owners: (1) "Federal Recovery Systems, LLC," which was licensed to operate "Passages Northeast" at 6428B Meadows Court, and "Passages East" at 6439B Sycamore Meadows Drive; (2) "Grasshopper House LLC," which was licensed to operate "Passages C" at 6439 Sycamore Meadows Drive, "Passages Vista House" at 6380 Meadows Court, "Passages" at 6428 Meadows Court and "Passages" at 6447 Sycamore Meadows Drive; (3) "6390 Meadows Court LLC," which was licensed to operate "Passages 8" at 6390 Meadows; and (4) "6390A Meadows Court LLC," which was licensed to operate "Passages 9" at "the rear guest house" of the residence at 6390 Meadows Court.

---

not only those facts alleged in the complaint but also facts that may be implied or inferred from those expressly alleged"].)

[2] As discussed in more detail below, under Health and Safety Code section 11834.23, an alcoholism and drug abuse treatment facility licensed to serve six or fewer persons is generally exempt from local ordinances that are not otherwise applicable to single-family residences. (See Health and Safety Code, §§ 11834.22, 11834.23.) No such exemption exists for treatment facilities licensed to serve more than six persons.

2. The City's allegations regarding the Passages facilities' use of "false addresses" and "ancillary structures"

In 2006, the City of Malibu (the City) sent a letter to the Department's predecessor (the Department of Alcohol and Drug Programs[3]) asserting that the Department had improperly licensed multiple treatment facilities to operate on a single parcel of residential property. The City explained that the Department's records showed it had licensed Grasshopper House to operate facilities at "6439 Sycamore Meadows" and "6428 Meadows Court," and had additionally licensed Federal Recovery Systems to operate two separate facilities at "6439-B Sycamore Meadows" and "6428-B Meadows Court." The City contended that under its local ordinances, 6439 Sycamore Meadows and 6428 Meadows Court were each "one legal parcel with one permitted single-family residence. . . . 6439-B [and 6428-B are] not . . . legal address[es]." The City further asserted that because "only one address [had been] assigned to each parcel of land, . . . [the Department could only license] one facility . . . at each location. Applicants [cannot]. . . simply create an address in order to obtain multiple addresses for one location."

In February of 2007, the City sent a similar letter arguing that by issuing permits "that allow for more than one licensed facility on one parcel, the . . . Department [wa]s allowing the applicant to violate local [zoning] laws." The City explained that all of the Passages facilities were located on parcels zoned as "Rural Residential," which did not allow for more than one single-family residence. Although the City acknowledged that Health and Safety Code section 11834.23[4] required local entities to treat any facility serving six or fewer persons as a single-family residence, it argued that the Department's actions were unlawfully authorizing multiple single-family dwellings on a single residential parcel: "[J]ust as a maximum of one single-family dwelling is permitted on each lot in the . . . zone, only one residential

---

[3] Prior to July of 2013, the now-dissolved Department of Alcohol and Drug Programs was responsible for licensing alcoholism and drug abuse treatment facilities. (See Health and Safety Code, § 11750.)

[4] Unless otherwise noted, all further statutory citations are to the Health and Safety Code.

care facility is permitted on each lot in the . . . zone. [¶] . . . Any locations where more than one license has been issued on one parcel, the application is in violation of local regulations."

In a response letter dated March 30, 2007, the Department informed the City that the relevant licensing statutes and regulations did "not identify issues of property lines, parcel numbers, building addresses, etc. as a requirement to license [a treatment facility]." The Department further noted, however, that licensees were required to "meet all State, federal, and/or local codes and regulations," and requested that the City provide documentation demonstrating the licensees were "violating local Malibu ordinances or codes."

In response, the City argued that its prior correspondence with the Department was sufficient to establish prior "instances of licenses being issued to two addresses on single parcels of residential land. This results in a situation where a single legal residence gains two licenses for six patients each and as a result is in violation of local zoning regulations." The Department, however, informed the City that the Department did not have "the authority to decide if the licensee [was] in compliance with Malibu City Code. If, according to Malibu City Code, only one single-family residence is permitted on the site, the State law does not authorize the Department to take any kind of enforcement action[,] such as license suspension or revocation[,] unless and until a final determination is made by the enforcement authority of the City of Malibu . . . that a violation has occurred. At that point, the Department will decide on the appropriate action in regard to the facility licenses."

Although the City maintained its prior letters to the Department were sufficient to establish that the Passages facilities were in violation of local zoning laws, it voluntarily elected to provide a declaration from Gail Sumpter, the manager of Malibu's "Permit Services Division," stating that: (1) the Malibu Municipal Code (MMC) only assigned "one legal address . . . per [residential] parcel," and (2) "[s]eparate addresses are not assigned for accessory structures" on the property. Sumpter's declaration further asserted that several of the Passages facilities were operating under licenses that had been issued to addresses that did not legally exist.

After receiving the declaration, the Department notified Chris Prentiss, the director of Federal Recovery Systems, that the City had provided evidence that the treatment facilities located at 6428-B Meadows Court and 6439-B Sycamore Meadows Drive were operating in a manner that violated local ordinances. The Department explained that the City's evidence showed the facilities were located on parcels "designated for only one single-family residence," which appeared to preclude the operation of two treatment facilities on a single parcel. Prentiss, however, informed the Department that the MMC authorized more than one structure on parcels zoned for residential use. In support, Prentiss cited various ordinances and statutes allowing the use of "guest units" (MMC, § 17.010.020, subd. (c)(1)) and "second units" (see Gov. Code, § 65852.2) in residential areas. According to Prentiss, these additional permitted structures "c[ould] be occupied by . . . licensed [treatment facilities] without discrimination."

In a letter dated June 18, 2008, the City disputed Prentiss's interpretation of the MMC, asserting that its local ordinances made clear that guest houses did not qualify as "single-family residences." The City further asserted that its ordinances "flatly prohibit[] more than one single-family residence on each parcel and State law does not afford drug and alcohol rehabilitation facilities greater rights than those enjoyed by a single-family residences." The Department, however, took no action against any of the Passages facilities.

3. The City's renewed challenges to the Passages facilities

Several years later, in September of 2013, the City sent the Department a letter renewing its objections to the licensing of any Passages facility located in a structure that did not qualify as a single-family residence. The City reiterated that under the applicable state laws, "alcohol and drug treatment facilities are treated as single-family residences, where the City is permitted to apply its zoning ordinances to these facilities so long as the restrictions are identical to those applied to other single-family residences. . . . The City prohibits address designation for ancillary structures such as guesthouses and pool houses, as these structures are not permitted to be used as dwellings. Further, the [MMC] prohibits more than one single-family dwelling per lot in the zone where Passages owns property in Malibu."

On October 3, 2013, the Department notified the City that it had inspected each of the Passages facilities, and found them to be in compliance with all licensing requirements. The Department requested that the City clarify what actions had been taken "to bring the facilities into compliance with local zoning requirements." Specifically, the Department inquired whether the City had notified the property owners of the alleged zoning violations, issued any citations for such violations, "taken any legal action to enforce the local zoning laws" or obtained any "final judgment . . . finding that the owner is in violation of local zoning laws."

Eight months later, the City sent the Department a letter raising a new argument regarding the licensing of the Passages facilities. The City contended that Health and Safety Code section 11834.09 prohibited the Department from individually licensing multiple facilities that operate as part of a single, "integrated" facility. According to the City, section 11834.09 "only authorize[d the] operation of a single [treatment] facility across multiple buildings if an integrated license is issued. . . ." The City further asserted that "Passages operates a single program across eight buildings, which are 'constituent parts' of the whole. Because an integrated license has never been issued to authorize an integrated, overarching program, Passages is operating beyond the authority granted by each and every license it has received through its affiliates." The City requested that the Department inspect the facilities, and consolidate "the eight licenses into a single integrated license, so that appropriate local regulations may be applied for the protection of the health, safety and welfare of the residents in and near the Passages facility."

On September 18, 2014, the Department conducted an inspection of the eight Passages facilities. Two months later, the Department issued an investigative report finding no deficiencies.

B. The City's Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief

1. Summary of the City's complaint

On February 24, 2015, the City filed a "petition for writ of mandate and complaint for declarative and injunctive relief" challenging the Department's

decision to individually license each of the Passages facilities. The City's writ claim asserted the Department had violated state licensing laws in two ways. First, the Department had acted unlawfully by "issuing licenses to ancillary structures (guest houses and pool house) and not revoking the licenses upon receipt of evidence that the ancillary structures could not legally be operated as separate single-family facilities."

Second, the Department had unlawfully "issu[ed] separate residential facility licenses to one rehab center operated across eight integrated component structures." According to the complaint, the Department had a mandatory duty to revoke each of the eight individual licenses, and "require Passages . . . to obtain [one] integral facility license." The City alleged that the following facts demonstrated the "eight units making up the Passages . . . '10- acre property' are integral components of a single facility": (1) the eight facilities share "a single cafeteria, laundry facility and fitness center;" (2) all eight facilities are accessed through a gated entrance staffed by a Passages agent; and (3) the eight facilities "share the same management, legal counsel and mailing addresses, and operate programs whose names are all variations of 'Passages.'" The City argued that because the Department had violated its "mandatory duty to issue licenses in accordance with the requirements of state law," the court should issue a "peremptory writ compelling the Department to set aside its approval of the [Passages] licenses. . . ."

The City's declaratory relief claim sought a similar remedy, requesting a "judicial declaration that (i) each of the eight licenses issued to Passages . . . was issued in contravention of the [licensing] statute[s] and is void or subject to being ordered by the court to be set aside; (ii) that Passages Malibu operates an integral facility within the meaning of the Health and Safety Code; (iii) that the licenses issued to 'B' units at 6390 Meadows Court, 6428 Meadows Court, and 6439 Sycamore Meadows are null and void; and (iv) that no rehab services may be rendered based on the licenses as issued." The City also requested an injunction precluding the Department from issuing or renewing licenses to any facility located on the Passages campus, or to any facility located in a structure that did not have a legal address.

2. The Department and Passages's demurrers

The Department and several Passages-related entities, acting in their capacity as the real parties in interest (Passages[5]) (collectively defendants), filed demurrers seeking dismissal of the City's complaint. Passages initially argued that the City lacked standing to challenge the Department's licensing decisions: "To establish standing for a writ petition, a party must show it has a beneficial interest and that the interest the party seeks to advocate is within the zone of interests that the laws in question are designed to protect [Citations]. [¶] The City is not advancing an interest that is within the zone of interests of the statutes. The Health and Safety Code is designed to further the State's interests that cities will permit and encourage the development of [treatment] facilities, and the law has the aim of regulating local zoning that would impede the State's goals. The City's zoning interests in this case is contrary to the interests the statute are designed to protect."

The Department and Passages also argued that even if the City did have standing to assert its claims, none of the conduct alleged in the complaint violated any duty or requirement set forth in the Health and Safety Code. Defendants argued the City had failed to identify any statute or regulation that prohibited the Department from issuing a license to a treatment facility located in a structure that was not permitted as a "single-family residence," or that that did not have an official street address. Defendants also argued that while Health and Safety Code section 11834.09 authorized the Department to issue a single license to an "integrated" treatment facility made up of multiple residences, nothing in the Code prohibited it from issuing individual licenses to each residence within an integrated facility.

In opposition, the City argued it had standing to challenge the Department's licensing decisions based on its "zoning interests . . . to protect the integrity of [its] residential neighborhoods." The City explained that the Department's unlawful decision to individually license the eight Passages

---

[5] The real parties in interest include Chris Prentiss, in both his individual capacity and as Trustee of the Prentiss Trust, Federal Recovery Systems LLC, Grasshopper House LLC, 6390 Meadows Court LLC and 6390A Meadows Court LLC.

facilities, rather than to issue a single license to the entire facility, had enabled a large-scale alcoholism and drug abuse treatment facility to operate in a residential neighborhood, exempt "from local land use laws and regulations."

The City additionally argued that the licensing scheme did not allow the Department to issue a license to any facility located in a "structure[] that [had not been permitted] as [a] legal single-family structure[]" under the local zoning ordinances. The City contended the Department's decision to issue licenses to ancillary structures such as guest houses and pool houses had effectively allowed Passages to place multiple single-family dwellings within a single residential parcel. The City also argued that because the eight facilities qualified as "integral components of a single [treatment] facility," Health and Safety Code section 11834.09 required, rather than authorized, the Department to issue one "'integral' license" to the entire operation.

3. The trial court's order and judgment of dismissal

Following a hearing, the trial court issued an order granting the defendants' demurrers without leave to amend. The court agreed with Passages's assertion that the City lacked standing to bring a writ claim challenging the Department's licensing decisions. The court explained that to establish its status as a "beneficially interested" party, the City had to show it had an interest in the matter that fell "within the zone of interests protected by the statutory scheme or legal duty." The court further concluded that the City's interest in protecting the integrity of its residential neighborhoods was insufficient to "confer standing" because the statutory scheme made clear that the Legislature had intended to preclude enforcement of local zoning ordinances against alcoholism and drug abuse treatment facilities.

The court further concluded that even if the City had standing to pursue its claims, the facts alleged in the complaint did not establish the Department had violated a mandatory duty, or otherwise engaged in any form of unlawful conduct. The Court rejected the City's interpretation of section 11834.09, finding that the statute provided the Department discretion whether to individually license treatment facilities that were "integral components" of a single facility, or whether to issue one license to the entire

"integrated facility." The court also concluded the City had failed to identify any statute or regulation that precluded the Department from issuing a license to a treatment facility located in a structure that was not permitted as a single-family residence under the local zoning ordinances. As stated by the court: "the fact that the guest houses and pool houses are not single-family residences under City laws ha[s] no bearing on [the Department's licensing] determination. Nothing in the statutory scheme or Department regulations permits the Department to deny or revoke a license based on local zoning law."

DISCUSSION

A. Standard of Review

"'On appeal from a judgment of dismissal following the sustaining of a demurrer without leave to amend, the appellant "has the burden to show either [that] the demurrer was sustained erroneously or that to sustain the demurrer without leave to amend constitutes an abuse of discretion." [Citation.]' [Citation.]" (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 866.) "The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]" (*Aubry v. Tri–City Hospital Dist. (*1992) 2 Cal.4th 962, 966–967.)

In this case, the City argues only that the allegations in its complaint state claims for a writ of mandate and for declaratory relief. The City has not argued that it can cure any defect that may exist in the pleading through amendment. Accordingly, the only issue we must determine is whether the allegations, as pleaded, state a cause of action.

B. Summary of the Statutory Scheme and the Implementing Regulations

1. Summary of statutes and regulations governing alcoholism and drug abuse recovery and treatment facilities

Under the Health and Safety Code, the Department has "sole authority" to license an "adult alcoholism or drug abuse recovery or treatment facility." (§ 11834.01.) The Code defines "alcoholism or drug abuse recovery or treatment facility," and the term "facility" standing alone, (hereafter treatment facility or facility) as any "premises, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services." (§ 11834.02.) The implementing regulations[6] similarly define the terms "alcoholism or drug abuse recovery or treatment facility" and "facility," as used in the regulations, to mean any "facility, building, or group of buildings which is maintained and operated to provide 24-hour, residential, nonmedical, alcoholism or drug abuse recovery or treatment services." (Regs., § 10501, subds. (a)(6), (16) and (27).)

Section 11834.03 requires any person or entity seeking a license for a treatment facility to file the following items with the Department: "(1) A completed written application for licensure. [¶] (2) A fire clearance approved by the State Fire Marshal or local fire enforcement officer. [¶] (3) A licensure fee. . . ." (§ 11834.03, subd. (a).) The regulations additionally require that the application include a "written plan of operation" containing, among other things, a "statement of program goals and objectives"; an "outline of activities and services to be provided by the licensee"; a "staffing plan, job descriptions, and minimum staff qualifications"; "A sketch of the grounds, showing buildings, driveways, fences, storage areas, pools, gardens, recreation areas, and other space used by residents;" and "Floor plans which describe the

---

[6] The implementing regulations are expressly authorized under section 11834.50, and set forth in Title 9 of the California Code of Regulations, at sections 10500-10631 (hereafter regulations).

dwelling capacity, intended use, and dimensions of the rooms." (Regs., § 10517, subds. (a)(2)(A), (B), (G), (H) and (I).)

The regulations governing the "Buildings and Grounds" of treatment facilities require that the facility "be separate and secure," and that all "living, sleeping, bathing and toiletry areas . . . be enclosed by permanent walls, floors, ceilings, and doors." (Regs., § 10581, subd. (a)(3).) The regulations clarify, however, that these requirements do not "preclude the use of more than one building" or "the use of wing(s) of a building or floor(s) of a building in meeting the requirements for licensure." (Regs., § 10581, subds. (a)(3)(A) & (a)(3)(B).) The licensee must also ensure the facilities remain "clean, safe, sanitary and in good repair at all times for the safety and well-being of residents, employees and visitors." (Regs., § 10581, subd (a).)

2. Licensing of integrated facilities

Section 11834.09, subdivision (a) states that "[u]pon receipt of a completed written application, fire clearance, and licensing fee from the prospective licensee, and subject to the department's review and determination that the prospective licensee can comply with this chapter and regulations adopted pursuant to this chapter, the department may issue a single license to the following types of alcoholism or drug abuse recovery or treatment facilities: [¶] (1) A residential facility. (2) A facility wherein separate buildings or portions of a residential facility are integral components of a single alcoholism or drug abuse recovery or treatment facility and all of the components of the facility are managed by the same licensee."

The regulation governing "Licensure of Integral Facilities" states, in relevant part:

"(a) The licensee may provide housing and alcoholism or drug abuse recovery or treatment services in the same building or the licensee may house residents in one building and provide services in another building, provided that all of the buildings are:

(1) Integral components of the same facility,
(2) Under the control and management of the same licensee, and
(3) Licensed as a single facility.

(b) Multiple facility programs which do not meet the criteria of Subsection (a) of this regulation shall secure independent licenses for each separate facility in accordance with the requirements of this chapter." (Regs., § 10508.)

3. Limitations on local regulation of treatment facilities

The governing statutes place limitations on local entities' ability to regulate treatment facilities that are licensed to serve six or fewer persons. Section 11834.20 states "that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need." In furtherance of that goal, sections 11834.22 and 11834.23 generally prohibit a local entity from enforcing any ordinance against a treatment facility licensed to serve "six or fewer persons[7]" that is not otherwise enforceable against a single-family residence.

Section 11834.22 states that a facility serving six or fewer persons cannot be subject to any "taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject." Section 11834.23, subdivision (a) states that a treatment facility serving "six or fewer persons shall be considered a residential use of property for the purposes of this article," and that "the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance that relates to the residential use of property pursuant to this article." Section 11834.23, subdivision (b) states that "[f]or the purpose of all local ordinances, [a treatment facility] . . . that serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, . . . guest home, . . . community residence, or other similar term that implies that the [treatment facility] is a business run for profit or differs in any other way from a single-family residence."

Section 11834.23, subdivision (c) clarifies, however, that subdivisions (a) and (b) "shall not be construed to forbid a [local entity] from placing

---

[7] The Code clarifies that the phrase "six or fewer persons" does "not include the licensee or members of the licensee's family or persons employed as facility staff." (§ 11834.20.)

restrictions on building heights, setback [and] lot dimensions . . . of [a treatment facility] that serves six or fewer persons as long as the restrictions are identical to those applied to other single-family residences." Subdivision (d) similarly provides that section 11834.23 "shall not be construed to forbid the application to [a treatment facility] of any local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. However, the ordinance shall not distinguish [treatment facilities] that serve six or fewer persons from other single-family dwellings or distinguish residents of [treatment facilities] from persons who reside in other single-family dwellings." Finally, subdivision (e) provides that "No conditional use permit, zoning variance, or other zoning clearance shall be required of [a treatment facility] . . . that serves six or fewer persons that is not required of a single-family residence in the same zone."

4. Department's inspection and revocation authority

The Department is authorized to enter and inspect any building, premise or record of a treatment facility, with or without notice, "to secure information regarding compliance." (§ 11834.35.)

Section 11834.36 authorizes the Department to "suspend or revoke any license issued under this chapter, or deny an application for licensure, extension of the licensing period, or modification to a license, upon," among other things, "[v]iolation by the licensee of any provision of this chapter or regulations adopted pursuant to this chapter"; "Misrepresentation of any material fact in obtaining the . . . treatment facility license"; and "Conduct in the operation of [a treatment facility] that is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or to the people of the State of California."

C. The City Qualifies as a "Beneficially Interested" Party

The defendants initially argue that we need not consider the merits of the City's writ of mandate claim because it lacks standing to challenge the Department's decision to license the Passages treatment facilities. The trial court agreed with this argument, concluding the City's stated interest in the

matter – protecting the integrity of its residential neighborhoods – did not fall within the "zone of interests of the statutory licensing scheme."

"[S]ection 1085 of the California Code of Civil Procedure creates a broad right to issuance of a writ of mandate 'to compel performance of an act which the law specifically enjoins.' Section 1085 'is available not only to those who have enforceable private rights, but to those who are "beneficially interested" parties within the meaning of Code of Civil Procedure section 1086.' [Citation.]" (*Doctor's Medical Laboratory, Inc. v. Connell* (1999) 69 Cal.App.4th 891, 896; see also *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165-166 (*Save the Plastic Bag Coalition*) ["As a general rule, a party must be 'beneficially interested' to seek a writ of mandate"].) "'The requirement that a petitioner be "beneficially interested" has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.] . . . . "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." [Citation.]' [Citation]. The beneficial interest must be direct and substantial. [Citations.]" (*Save the Plastic Bag Coalition, supra,* 52 Cal.4th at pp. 165-166.)

Under the standard set forth above, the City qualifies as a "beneficially interested" party. The City claims the Department has engaged in unlawful licensing decisions that have allowed Passages to run a large-scale alcoholism and drug abuse treatment facility in an area that has been zoned for residential use. The City further contends that by individually licensing each of the Passages facilities to serve six or fewer persons, rather than issuing a single "integrated" license to the facility as a whole, the Department has precluded the City from enforcing local land use ordinances that are intended to protect the community. The City's interest in maintaining its ability to control and regulate the use of within its boundaries, which has been directly curtailed by the Department's licensing decisions, qualifies as a direct and substantial interest that is "over and above the interest held in common with the public at large." (*Save the Plastic Bag Coalition, supra,* 52 Cal.4th at pp. 165-166.)

The trial court reached a different conclusion, finding that the City did not qualify as a "beneficially interested" party because "its interests [were not] within the zone of interests protected by the statutory scheme or legal duty." The trial court explained that the Legislature had expressly declared its intent to limit local entities' ability to regulate residential treatment facilities through zoning ordinances. Thus, according to the trial court, any interest the City had in controlling local land uses was "not within the interests protected by the statutory scheme," but rather was an intended "consequence" of the licensing scheme.

The trial court's "zone of interest" analysis is based on a standard first articulated in *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223: "There are two prongs to the test for the beneficial interest required to pursue an action in mandamus. The first . . . is whether the plaintiff will obtain some benefit from issuance of the writ or suffer some detriment from its denial. . . . [¶] The second prong of the beneficial interest test is whether the interest the plaintiff seeks to advance is within the zone of interests to be protected or regulated by the legal duty asserted. [Citation.]" (*Id.* at pp. 1233-1234.) Although the *Waste Management* court recognized "'the zone of interest' standard" was a "federal rule of standing," it nonetheless concluded that the standard was also "implicit in [California] rules of standing." (*Id.* at p. 1234.)

In *Save the Plastic Bag Coalition, supra,* 52 Cal.4th 155, however, our Supreme Court expressly disapproved of *Waste Management's* analysis: "The *Waste Management* court . . . declared that an interest within the regulated zone is a second prong of the beneficial interest test. The court . . . acknowledged that the 'zone of interests' standard is a federal rule of standing, but suggested it is implicitly included within California's requirement that the plaintiff's interest in enforcement must be a direct one. [Citation.] We have not adopted this federal standing doctrine for use in California courts. Its application in federal courts has not been entirely uniform. [Citations.] [¶] We reiterate our recent admonition that '[t]here are sound reasons to be cautious in borrowing federal standing concepts, born of perceived constitutional necessity, and extending them to state court actions where no similar concerns apply.' [Citation.]" (*Id.* at p. 166, fn. 3.)

Based on the Supreme Court's statements in *Save the Plastic Bag Coalition,* we do not believe the "zone of interest" standard is relevant in determining whether a party is "beneficially interested" within the meaning of Civil Code section 1086. Rather, as explained above, our Supreme Court has interpreted "beneficially interested" to mean only that the party seeking a writ of mandate must have a "special interest . . . over and above the interest held in common with the public at large," and that the interest be both "direct" and "substantial." (*Save the Plastic Bag Coalition, supra,* 52 Cal.4th at pp. 165-166.) The City of Malibu's has satisfied that standard here.

D. The Conduct Alleged in the Complaint Does Not Demonstrate that the Department's Licensing Decisions Violated a Mandatory Duty or Constituted an Abuse of Discretion

1. Standards governing a writ of mandate

"A writ of mandate 'may be issued by any court . . . to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station. . . .' [Citation.] The petitioner must demonstrate the public official or entity had a ministerial duty to perform, and the petitioner had a clear and beneficial right to performance. [Citation.] . . . . [¶] . . . . 'A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion . . . is the power conferred on public functionaries to act officially according to the dictates of their own judgment. [Citation.]' [Citations.] Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner. [Citation.]" (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700-701.)

"Where the duty in question is not ministerial, mandate relief is unavailable unless the petitioner can demonstrate an abuse of discretion. "'While, of course, it is the general rule that mandamus will not lie to control the discretion of a court or officer, meaning by that that it will not lie to force

the exercise of discretion in a particular manner . . . [it] will lie to correct abuses of discretion. . . ." [Citation.] In determining whether an abuse of discretion has occurred, a court may not substitute its judgment for that of the administrative board [citation], and if reasonable minds may disagree as to the wisdom of the board's action, its determination must be upheld [citation].' [Citations.] A decision is an abuse of discretion only if it is 'arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.' [Citation.]" (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229, 235.)

The City argues that the Department's decision to individually license each of the eight Passages facilities violated the statutory licensing requirements in two, alternate ways. First, the City contends that the Department was required to license the eight Passages facilities, if at all, as a single, integrated facility, rather than as eight individual facilities. Alternatively, the City argues that if the Department was authorized to issue individual licenses to the facilities, it nonetheless had a mandatory duty to revoke the licenses of three Passages facilities located in "ancillary structures" (two guest houses and a pool house) that are not permitted as single-family residences under the City's zoning ordinances.

2. The Department did not have a mandatory duty to license all of the Passages facilities as a single, "integrated" facility

The City's complaint alleges the Department violated a mandatory duty, or otherwise abused its discretion, when it issued individual licenses to eight different treatment facilities located on five contiguous parcels of residential property. The eight facilities are licensed to four different entities: "Federal Recovery Systems" (licensee of "Passages Northeast" and "Passages East"); "Grasshopper House" (licensee of "Passages C," "Passages Vista House" and two facilities named "Passages"); "6390 Meadows LLC" (licensee of "Passages 8"); and "6390A Meadows LLC" (licensee of "Passages 9"). The City alleges that despite their status as separate corporate entities, the four licensees are in fact alter egos of one another, and share the same management and ownership.

Each of the Passages facilities is currently licensed to serve six or fewer residents, thereby precluding the City from enforcing any local ordinances against the facilities that are not otherwise enforceable against a single-family residence. (§ 11834.23.) The City contends, however, that the Department was required to license all eight facilities as a single, "integrated" facility, which would enable the City to enforce a wider range of ordinances against the Passages facility as a whole.[8]

In support of this argument, the City relies on Health and Safety Code section 11834.09, subdivision (a) which states that once an applicant has satisfied all the requirements for licensure (which includes submitting an application, a fire clearance and a licensing fee, and demonstrating an ability to comply with all statutory and regulatory requirements), "the department may issue a single license to the following types of alcoholism or drug abuse recovery or treatment facilities: (1.) A residential facility. (2) A facility wherein separate buildings or portions of a residential facility are integral components of a single alcoholism or drug abuse recovery or treatment facility and all of the components of the facility are managed by the same licensee." The City contends that under section 11834.09, subdivision (a)(2), the Department is only authorized to issue one license to multiple facilities that are "integral components" of a single facility. Applying that interpretation here, the City contends that because the eight Passages facilities are "integral components" of a single operation, they were licensable (if at all) only as a single "integrated facility," rather than as eight individual facilities.

We do not agree with the Department's interpretation of section 11834.09. The language of the statute and its implementing regulation (see regs., § 10508), indicate that subdivision (a)(2) has two purposes. First, the subdivision sets forth the requirements an applicant must meet in order to obtain a license for a facility that is comprised of "multiple buildings or

---

[8] According to the complaint, the eight Passages facilities are collectively licensed to serve a total of 46 persons. Thus, if the Department issued a single license to all eight of the Passages facilities, section 11834.23's limitations on the enforcement of local ordinances against facilities licensed to serve six or fewer persons would no longer apply.

portions of a residential facility." As stated in section 10508 of the regulations, titled "Licensure of Integral Facilities," the statute allows a facility to "house residents in one building and provide services in another building provided that all of the buildings are: [¶] (1) Integral components of the same facility; [¶] (2) Under the control and management of the same licensee; and [¶] (3) Licensed as a single facility." Thus, as implemented in the regulations, section 11834.09, subdivision (a)(2) authorizes the Department to license a facility that uses more than one building (or portions of a building) to treat its guests, provided that all the buildings are integral to the facility, are maintained and controlled by the licensee and are included within the license. Although the City's complaint does suggest that each of the individually-licensed Passages facilities utilizes multiple buildings,[9] the City has never alleged that any of these facilities failed to meet the requirements listed in section 10508 of the regulations. Instead, the City has argued only that the eight facilities had to be licensed, if at all, as a single integrated entity.

In addition to describing the circumstances that are required to obtain a license for a multi-building facility, section 11834.09 appears to authorize the Department to issue one license to an applicant who manages and controls multiple facilities that qualify as integral components of a single facility, thereby relieving the applicant of having to submit separate applications, fire clearances and licensing payments for each facility within the larger facility. Contrary to the City's assertion, however, the statute contains no language that requires the Department to issue a single license under such circumstances. Instead, the language is permissive, stating that the Department "may" issue a single license when separate buildings or portions of a facility are integral components of a single facility.

This interpretation is in accord with section 10508, subdivision (b) of the regulations, which states that "multiple facility programs which do not meet the criteria described in" section 11834.09, subdivision (a)(2) "shall secure independent licenses for each separate facility." This language

---

[9] Specifically, the complaint states that the residents of the eight facilities "have access to a single cafeteria, laundry facility and fitness center," which are presumably located in a shared building.

implies that subdivision (a)(2) is intended to describe the circumstances under which an applicant may seek a single license for a "multiple facility program." The statute and the regulation, however, contain no language indicating that an applicant must seek, or that the Department must issue, only one license for "multiple facility program."

If the Legislature had intended to require the Department to issue only one license in circumstances where multiple facilities are "integral components" of a larger entity, it could have included statutory language mandating such an outcome. Indeed, in 2012 and again in 2016, legislation was introduced that would have amended the licensing statutes to impose that exact requirement. As introduced on December 12, 2012, Assembly Bill 40 would have amended section 11834.09 as follows (amendments noted in underlined and strikethrough text):

"(a) Upon receipt of a completed written application, fire clearance, and licensing fee from the prospective licensee, and subject to the department's review and determination that the prospective licensee can comply with this chapter and regulations adopted pursuant to this chapter, the department shall issue a single license to the following types of alcoholism or drug abuse recovery or treatment facilities:

(1) A residential facility, other than integral facilities.

~~(2) A facility wherein separate buildings or portions of a residential facility are integral components of a single alcoholism or drug abuse recovery or treatment facility and all of the components of the facility are managed by the same licensee.~~

(2) Integral facilities, as defined in subdivision (d) of Section 11834.02."

(Assem. Bill No. 40 (2013-2014, Reg. Sess.), as introduced December 12, 2012.)

The proposed bill also would have added section 11834.02, subdivision (d):

"(d) As used in this chapter, 'integral facilities' means any combination of two or more facilities, located on the same or different parcels, . . . that are under the control or management of the same owner, operator, management company or licensee or any affiliate of any of them, and which together comprise one operation. Integral facilities shall include, but not be limited to,

the provision of housing in one facility and recovery programming, treatment, meals, or any other service or services at another facility, or facilities, or by assigning staff, . . . to provide services to or in more than one facility." (Assem. Bill No. 40 (2013-2014, Reg. Sess.), as introduced December 12, 2012.)

Early last year, an Assembly member whose district included the City of Malibu introduced Assembly Bill No. 2403, which would have made identical changes to sections 11834.02 and 11834.09. (See Assem. Bill No. 2403 (2015-2016 Reg. Sess.), as amended on April 5, 2016 and April 26, 2016.) The Legislation died in committee. If adopted, Assembly Bill Nos. 40 and 2403[10] would have mandated that the Department issue only one license under the circumstances that are allegedly present here, i.e., when multiple facilities under the control of the same owner comprise a single operation.

"'As a general rule, unpassed legislation provides "'very limited"' guidance' when interpreting existing legislation.' [Citation.] 'However, in some circumstances it may be a reliable indicator of existing legislative intent.' [Citation.]" (*Lemaire v. Covenant Care California, LLC* (2015) 234 Cal.App.4th 860, 868 [citing and quoting *Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 761].) In this case, we believe that the repeated, unsuccessful attempts to amend sections 11834.02 and 11834.09 to require, rather than authorize, the Department to issue a single license to multiple facilities that comprise a single operation, supports our view that the statute does not currently impose such a requirement.

---

[10] The Department and the Real Parties in Interest have filed several motions for judicial notice requesting that we take notice of, among other things, Assembly Bill No. 40, as introduced on December 12, 2012, and Assembly Bill No. 2403, as amended on April 5, 2013. We grant their requests with respect to those documents. (See Evid. Code, § 452, subd. (c) & 459; *Elsner v. Uveges* (2004) 34 Cal.4th 915, 929, fn. 10.) We deny their requests to take judicial notice of various additional legislative materials, which are not necessary to our decision. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4 [denying motion to take judicial notice of documents that were not relevant to issues presented in the appeal]; *Larner v. Los Angeles Doctors Hosp. Associates, LP* (2008) 168 Cal.App.4th 1291, 1298 [denying motion to take notice of "documents [that were] not necessary to [the court's] decision"].)

3. The Department did not have a mandatory duty to deny or revoke licenses to treatment facilities located in structures that are not permitted as single-family residences

The City argues that even if the Department was not required to treat all of the Passages facilities as a single, integrated facility for purposes of licensing, it was nonetheless required to revoke the license of any Passages facility located in an "ancillary structure" that is not permitted as a single-family residence under Malibu's local ordinances. According to the allegations in the City's complaint, two of the licensed Passages facilities are located in structures that the City permitted as "guest houses," and a third facility is located in a structure that is permitted as a "pool house." The City asserts that under its local ordinances, a guest house and a pool house are "not recognized as a single-family residence," and therefore do not qualify as a "residential facility" within the meaning of section 11834.09, subdivision (a)(1).

The City has cited no statute or regulation that requires a "residential facility" to be located in a structure that is permitted as a single-family residence under the applicable local ordinances. The only express requirements regarding the buildings and grounds of a treatment facility appear in the implementing regulations. Section 10581 of the regulations states: "(a) Facilities shall be clean, safe, sanitary and in good repair at all times for the safety and well-being of residents, employees and visitors. [¶]. . . [¶] (3) The facility must be separate and secure. Facility living, sleeping, bathing and toiletry areas shall be enclosed by permanent walls, floors, ceilings and doors." Section 10517 of the regulations additionally requires that, as a condition of licensure, the applicant must submit "[f]loor plans which describe the dwelling capacity, intended use, and dimensions of the rooms," and a "sketch of the grounds, showing buildings, driveways, fences, storage areas, pools, gardens, recreation areas, and other space used by residents." (Regs., § 10517, subds. (a)(2)(G) & (H).) These regulations contain no language suggesting that a "residential facility" must be located in a structure permitted as a single-family residence.

Moreover, the Health and Safety Code and the regulations both define an alcoholism and drug abuse treatment facility as (among other things) any

"building" that provides 24-hour nonmedical alcohol or drug abuse treatment services. Section 10581 of the regulations further clarifies that an applicant may use "a wing[ ]. . . or floor[] of a building [to meet] the requirements for licensure." (§ 10581, subds. (a)(3)(A) and (B).) These provisions clearly imply that a facility may be housed in any form of "building," or even in a portion of a building.

The City's assertion that, to qualify as a "residential facility" under section 11834.09, the facility must be located in a single-family residence is predicated on language in section 11834.23. As discussed above, that section imposes limitations on a local entity's ability to regulate a treatment facility that serves six or fewer persons. Specifically, the section provides that: (1) a facility serving six or fewer persons "shall be considered a residential use of property" (§ 11834.23, subd. (a));(2) the facility's residents "shall be considered a family for the purposes of any law or zoning ordinance that relates to the residential use of property" (*ibid.*); (3) the facility "shall not be included within the definition of a boarding house, rooming house" or any other "term that implies the [facility] is a business run for profit or differs in any other way from a single-family residence" (*id.* at subd. (b)); and (4) the facility shall not be subject to any local ordinances that do not otherwise apply to single-family residences. (*Id.* at subds. (c)-(e).)

In its brief, the City argues that "[section 11834.23 of] [t]he Code . . . ties the term 'residential' to local rules on single-family residences. In doing so the Code effectively points to local rules to help determine what qualifies as 'residential' under the Code." Thus, the City appears to contend that the requirements set forth in section 11834.23 impliedly define the term "residential facility," as used in section 11834.09, to mean a facility located in a structure that is permitted as a single-family residence under the local laws.

We fail to see how the language of section 11834.23 can be construed to require that a "residential facility" may only be located in a structure that is locally permitted as a single-family residence. The section merely requires that local entities treat facilities which serve six or fewer persons as a "residential use of property," rather than as a business or commercial use (§ 11834.23, subds. (a) and (b)), and that they treat such facilities in the same

manner as a single-family residence. Nothing in section 11834.23 purports to define the term "residential facility" as used in section 11834.09, or otherwise implies that a "residential facility" must be located in a structure that is permitted under the local ordinances as a single-family dwelling.[11]

The City complains, however, that by licensing facilities located in "ancillary structures" that are not permitted as a single-family residence, the Department has allowed Passages to bypass local zoning requirements that allow only one single-family residence on each residential parcel. As stated in the City's brief: "Each of the[] three ancillary structures [licensed to serve as a treatment facility] is on a lot with a single-family residence [that] . . . [t]he Department has separately licensed, resulting in more than one [facility] on a single parcel." The City contends that because section 11834.23 requires the City to "treat [each of these licensed facilities] . . . as if [it] were a single-family residence," the Department's actions have effectively authorized Passages to site multiple single-family residences on a single residential lot.

---

[11] We acknowledge that the precise meaning of the term "residential facility," as used in section 11834.09, is difficult to discern. The Legislature did not define the term "residential facility" (nor "residential"), and the term is not used in any other section of the Code or in the regulations. In its ordinary usage, however, "residential" means "used, serving or designed as a residence for occupation by residents." (Webster's Third New Int. Dictionary (1981) p. 1391.) Section 11834.02, in turn, defines the term "facility" (and the phrase "alcoholism or drug abuse recovery or treatment facility") to mean any "premises, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services." (§ 11834.02.) Combining the ordinary meaning of "residential" and the statutory definition of "facility," the most logical interpretation of the term "residential facility" is any "premises, place or building" where adults reside, and receive full-time, in-house nonmedical services for problems related to alcohol or drug abuse. Although this definition renders the word "residential," as used in section 11834.09, subdivision (a)(1), somewhat duplicative, we nonetheless conclude it represents a more logical interpretation of "residential facility" than the City's proposed definition, which reads a requirement into the statute—a "residential facility" must be located in a structure that is permitted as a single-family residence—that is not present.

As the City acknowledges, however, section 11834.23 only requires that the City regulate the Passages facilities in the same manner it regulates single-family residences. If the City believes the Passages entities are violating local zoning laws by utilizing two structures as single-family residences on a single residential parcel, nothing in the Health and Safety Code precludes it from bringing a zoning enforcement action against Passages asserting that argument.[12] Whether the City would ultimately prevail in such an enforcement action is beyond the scope of this appeal. The only issue presented here is whether the Department was required to deny a license to a facility located in a structure that is not permitted as a single-family dwelling. As discussed above, the City has failed to identify any statute or regulation imposing such a limitation on the Department's licensing authority.

In sum, based on the allegations in the complaint, the City cannot establish that is entitled to writ of mandate ordering the Department to revoke the licenses of any of the Passages facilities, nor is it entitled to a judicial declaration or injunction to that effect. We therefore affirm the trial court's judgment of dismissal.

---

[12] The City's complaint alleges that it has "attempted to enforce its prohibition" of multiple single-family residences against Passages, but asserts that "Passages has refused to cooperate based on its belief that it is exempt from regulation as a result of the . . . licenses . . . issued by the Department." There is, however, no allegation in the complaint, nor any evidence in the record, indicating that the City has ever initiated an enforcement action challenging Passages's belief that it is exempt from regulation.

DISPOSITION

The judgment is affirmed. The respondents and the real parties in interest shall recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

KEENY, J.*

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