Filed 9/17/18 Los Angeles Alliance for a New Economy v. City of Los Angeles 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

LOS ANGELES ALLIANCE FOR A NEW ECONOMY et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES et al., Defendants and Respondents; WAL-MART STORES, INC., Real Party in Interest.	B276906 (Los Angeles County Super. Ct. No.BS152834)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert O'Brien, Judge. Affirmed.

Schwartz, Steinsapir, Dohrmann & Sommers, Margo A. Feinberg, Henry M. Willis, and Amy Moolin Cu, for Plaintiffs and Appellants Los Angeles Alliance for a New Economy and United Food and Commercial Workers Local 770.

Michael N. Feuer, City Attorney, Terry Kaufmann Macias, Senior Assistant City Attorney, and K. Lucy Atwood, Deputy City Attorney, for Defendant and Respondent City of Los Angeles.

Manatt, Phelps & Phillips, Keli N. Osaki, for Real Party in Interest Wal-Mart Stores, Inc.

INTRODUCTION

Los Angeles Alliance for a New Economy and United Food and Commercial Workers Local 770 (collectively, the Alliance) argue a municipal zoning ordinance that applies to projects that "create or add" 100,000 square feet of floor space also applies to projects that "transform" that space. A zoning administrator in the Los Angeles Department of City Planning rejected this argument and renewed a conditional use beverage permit issued to Wal-Mart Stores, Inc. for a store located on South Normandie Avenue. The zoning administrator determined the Normandie store, which already exceeded 100,000 square feet when the City of Los Angeles approved its "Superstore Ordinance," did not become a "Superstore" when Walmart remodeled the store's interior without "creating or adding" 100,000 square feet of floor area.

After exhausting its administrative remedies, the Alliance petitioned the superior court for a writ of administrative mandate and sought a declaration that the Superstore Ordinance applies to the Normandie store. The trial court denied the petition. Because we agree with the zoning administrator's conclusion that the Superstore Ordinance does not apply to the Normandie store, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The City Issues Permits for the Normandie Store*

In May 2003 the City of Los Angeles approved a site plan review for the construction of a 151,327 square foot Walmart store on South Normandie Avenue. The store's location fell within an Economic Assistance Area known as the Harbor Gateway State Enterprise Zone.[1] The City's approval allowed Walmart to sell general merchandise, groceries and food, packaged beer, and wine for off-site consumption. The approval did not identify or restrict the percentage of floor area Walmart could devote to the sale of food or other nontaxable items.

In April 2004 the City approved a 10-year conditional use beverage permit for the Normandie store to sell a full line of alcoholic beverages for off-site consumption. The permit required Walmart to comply with all regulations governing the property's "development and use."

In March 2011 the City issued a tenant improvement permit to Walmart to remodel the Normandie store. Among other things, the store expanded its selection of grocery items and added 74 square feet of exterior space to provide a canopy for its

---

[1] Prior to its repeal in 2013, the Enterprise Zone Act sought "'to stimulate business and industrial growth' in 'areas within the state that [were] economically depressed due to a lack of investment in the private sector.'" (*Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1230; see Gov. Code, § 7071, subd. (a).) A project's location within an Economic Assistance Area created by the Enterprise Zone Act, however, remains relevant to the application of municipal code provisions like the ordinance at issue in this case.

auto service area. The record does not indicate the City received any objections to this permit.

B. *The City Approves the Superstore Ordinance*

Before the Normandie store's remodel in 2011, the City amended section 12.24, subdivision U, of the Los Angeles Municipal Code to create the so-called "Superstore Ordinance."[2] (Los Angeles Ord. No. 176166, amending § 12.24, subds. U.14(a) & (d).) The Superstore Ordinance, which became effective October 4, 2004, requires developers who want to establish in an Economic Assistance Area a large retail store devoting more than 10 percent of sales floor space to food and other nontaxable items to submit to the City an analysis of the store's economic impact on the surrounding area. (§ 12.24, subd. U.14(d)(2).) The Superstore Ordinance also requires the City to make certain findings about the economic impact of a proposed Superstore before approving a permit for such a project. (*Id.*, subd. U.14(d)(1).)

The Superstore Ordinance defines a "Superstore" as "a Major Development Project that sells from the premises goods and merchandise, primarily for personal or household use, and whose total Sales Floor Area exceeds 100,000 square feet and which devote more than 10% of sales floor area to the sale of Non-Taxable Merchandise."[3] (§ 12.24, subd. U.14(a).) A "Major

---

[2] Undesignated section references are to the Los Angeles Municipal Code.

[3] The ordinance excludes from this definition certain wholesale clubs selling primarily bulk merchandise and other establishments not relevant to this case. (§ 12.24, subd. U.14(a).)

Development Project" means "the construction of, the addition to, or the alteration of, any buildings or structures, which create or add . . . 100,000 square feet or more of floor area in other nonresidential or non-warehouse uses . . . ." (*Ibid*.) A "Major Development Project" also includes "the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot as determined by the Director of Planning." (*Ibid*.) "Floor area" as used in the definition of "Major Development Project" means interior floor space. (See *id*., § 12.03 [defining "floor area" as "[t]he area in square feet confined within the exterior walls of a Building"].)

The City did not require Walmart to comply with the Superstore Ordinance before it issued the permit for Walmart to remodel the Normandie store in 2011. The City also did not make the findings required by the Ordinance before granting that permit.

C. *Walmart Renews Its Conditional Use Beverage Permit*

In December 2013 Walmart applied to renew the Normandie store's conditional use beverage permit. The Alliance objected to the application. It argued the terms of the 2004 permit required Walmart to comply with all applicable "use" regulations, and Walmart had failed to comply with the Superstore Ordinance. In particular, the Alliance argued the Normandie store's 2011 remodel transformed the store into a Superstore by increasing the percentage of sales floor area

dedicated to the sale of nontaxable items.[4] The Alliance argued Walmart failed to submit the required economic impact study and otherwise comply with the Superstore Ordinance, and the City failed to make the necessary finding that the Normandie store would not materially adversely affect the economic welfare of the surrounding area. Thus, the Alliance argued the City should reject Walmart's application to renew its conditional use beverage permit.

The zoning administrator determined the Superstore Ordinance did not apply to the Normandie store because the 2011 remodel "did not create or add 100,000 square feet of floor area," and the application to renew the beverage permit did not propose any physical changes to the store. The zoning administrator made five other findings of fact in support of renewing the permit for three years.[5] The Alliance appealed the zoning administrator's decision to the Harbor Area Planning Commission, which adopted the zoning administrator's findings and upheld the decision to renew the permit.

---

[4] Walmart contends the Alliance has never proved the Normandie store devotes more than 10 percent of its sales floor area to nontaxable merchandise.

[5] The zoning administrator found renewing the permit (1) would perform a function or provide a service essential or beneficial to the community; (2) was compatible with and would not adversely affect the surrounding neighborhood; (3) conformed with the City's General Plan and Harbor Gateway Community Plan; (4) would not adversely affect the community's welfare or cause an undue concentration of premises selling alcohol; and (5) would not detrimentally affect nearby residentially-zoned communities. The Alliance does not challenge these findings.

D. *The Alliance Seeks Administrative Mandamus and Declaratory Relief*

Having exhausted its administrative remedies, the Alliance filed a petition for writ of mandate and complaint for declaratory relief in December 2014. The operative second amended petition and complaint included two causes of action. The first cause of action was by Los Angeles Alliance for a New Economy and sought only a writ of administrative mandate requiring the City to set aside the Harbor Area Planning Commission's approval of the conditional use beverage permit renewal for the Normandie store.[6] The second cause of action for declaratory relief was by both Los Angeles Alliance for a New Economy and United Food and Commercial Workers Local 770 and sought declarations under Code of Civil Procedure section 1060 that the Normandie store is a Superstore under the Superstore Ordinance, the requirements and limitations of the Superstore Ordinance apply to the Normandie store, and the City improperly renewed the Normandie Store's conditional use beverage permit.[7]

---

[6] The complaint named as defendants the City, the Los Angeles Department of City Planning, and the Los Angeles Department of Building and Safety. The City contends neither department is a separate legal entity.

[7] The petition and complaint originally sought to apply the Superstore Ordinance to the Normandie store and another Walmart location on Crenshaw Boulevard in Los Angeles. Walmart closed that store after the Alliance initiated this action. Walmart asserts the second cause of action for declaratory relief concerned the Crenshaw store only, but the second amended

After Walmart and the City answered the complaint, the Alliance filed a motion for a writ of administrative mandate. Following a hearing on the motion, the trial court denied the petition and the request for declaratory relief. The court found that the Normandie store predated the Superstore Ordinance and that the 2011 remodel did not subject the Normandie store to the Ordinance. The court stated the Superstore Ordinance applied where "(1) the project proposes the construction of, addition to, or alteration of buildings or structures that 'create or add' 100,000 square feet or more of floor area; (2) at least 100,000 square feet of floor area is used as a sales floor; and (3) more than 10% of the sales floor area is devoted to the sale of non-taxable merchandise." Like the zoning administrator, the trial court found that, because the 2011 remodel did not "create or add" 100,000 square feet of floor area, the remodel did not transform the Normandie store into a Superstore.

The trial court rejected the Alliance's argument that the Normandie store qualified as a "Major Development Project" under the Superstore Ordinance because the "cumulative sum" of the store's existing square footage in 2011 plus the 74 square feet added by the 2011 remodel exceeded the 100,000 square foot threshold in the ordinance. The court found the addition of 74 square feet in 2011 "did not cause" the building to exceed the threshold because the Normandie store already exceeded the ordinance's minimum square footage requirements when the ordinance came into effect. The court also found the ordinance was not retroactive, noting the Alliance did "not argue

---

complaint makes clear that cause of action concerned the Normandie store as well.

otherwise." The trial court entered judgment on June 30, 2016. The Alliance timely appealed.[8]

E. *Walmart Renews Its 2014 Conditional Use Beverage Permit*

During the pendency of this appeal, Walmart renewed the conditional use beverage permit it had renewed in 2014. On August 24, 2017 Walmart applied for the permit renewal, and on November 16, 2017 the Department of City Planning held a public hearing on the application. The City and Walmart contend, and the Alliance does not deny, the Alliance did not challenge Walmart's 2017 application to renew the 2014 permit. On December 28, 2017 the zoning administrator granted the application to renew the permit for an indefinite term.[9] Relying

---

[8] The City erroneously contends "the only issue on appeal" concerns the Alliance's first cause of action for writ of mandate. The notice of appeal, however, states the Alliance is appealing from the judgment entered on June 30, 2016, which refers to the trial court's June 13, 2016 ruling. That ruling denied both the Alliance's petition for writ of mandate and its request for declaratory relief. A judgment addressing only the first cause of action for administrative mandamus would not be appealable. (See Code Civ. Proc., § 904.1, subd. (a)(1).) The City also erroneously asserts the Alliance's opening brief does not raise any issues regarding the cause of action for declaratory relief.

[9] We grant the City's request for judicial notice of Walmart's August 24, 2017 application for renewal of the conditional use beverage permit in Case No. ZA 2004-0004-CUB-PA2, the Department of City Planning's November 3, 2017 Certificate of Posting for Public Hearing in Case No. ZA-2004-0004-PA2, and the zoning administrator's December 28, 2017 Letter of

on this development, the City and Walmart moved to dismiss this appeal as moot.

DISCUSSION

A. *The 2017 Permit Renewal Did Not Moot the Appeal*

The City and Walmart contend the City's renewal of Walmart's conditional use beverage permit in 2017 without objection from the Alliance mooted this appeal. Not all of it.

A case becomes moot "when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after the judicial process was initiated.'" (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574; accord, *Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1222.) "Where such mootness exists, proceeding further with the case "'can have no practical effect or cannot provide the parties with effective relief.'"" (*Association of Irritated Residents*, at p. 1223.)

Determination in Case No. ZA 2004-0004-CUB-PA2. (Evid. Code, §§ 452, subds. (c), (h), 459; see *Tower Lane Properties v. City of Los Angeles* (2014) 224 Cal.App.4th 262, 272, fn. 6 [court "may take judicial notice of local ordinances and other official resolutions, reports, and acts of a city"]; *Stockton Citizens for Sensible Planning v. City of Stockton* (2012) 210 Cal.App.4th 1484, 1488, fn. 3 [taking judicial notice of a city master development plan, a city planning department's notice of exemption for a project, and correspondence with a city planning commission].) We deny the City's request for judicial notice of a memorandum summarizing the November 16, 2017 permit renewal hearing and a letter from a third party supporting the renewal.

The Alliance's first cause of action for administrative mandamus sought a writ ordering the City to set aside the Harbor Area Planning Commission's September 2014 determination that adopted the zoning administrator's June 2014 findings in support of the 2014 renewal of Walmart's conditional use beverage permit. We agree with the City and Walmart's contention that the 2017 renewal precludes this court from granting any effective relief in connection with the requested writ. (See *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 [request for writ of mandate to order a county to terminate a contract with the petitioner's competitor became moot when the contract expired after the petitioner filed a notice of appeal].)

The City argues in its motion to dismiss that the Alliance's cause of action for administrative mandamus is moot, but the City does not address the Alliance's cause of action for declaratory relief. The appeal from the judgment on the latter cause of action is not moot because the Alliance alleges the City's ongoing failure to interpret the Superstore Ordinance to encompass the Normandie and similarly situated stores deprives economically challenged communities surrounding "noncompliant" stores of the process and protections of the Los Angeles Municipal Code. Thus, the declaratory relief cause of action presents an "actual controversy" under Code of Civil Procedure section 1060. (See *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 886 [complaint alleging a county's zoning process violated state zoning laws presented an "actual controversy," even though the parties resolved their dispute about the project at issue]; *Alameda County Land Use Assn. v. City of Hayward* (1995)

38 Cal.App.4th 1716, 1723 [complaint alleged a genuine controversy between the parties concerning the abnegation of a city's governmental and administrative powers].)

The complaint also seeks a declaration relating to the current and ongoing status of the Normandie Walmart store as a Superstore, which will affect the "ultimate obligations" of Walmart and the City under the Superstore Ordinance. (See *Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 361 [declaratory relief action that provided one party "definitive and conclusive relief" protecting it from subsequent enforcement actions was not moot]; see also *Californians for Native Salmon etc. Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1427 ["[d]eclaratory relief is appropriate to obtain judicial clarification of the parties' rights and obligations under applicable law"].) Therefore, the appeal from the judgment on the cause of action for declaratory relief is not moot.

B. *Standard of Review and Applicable Law*

We review a trial court's decision to grant or deny declaratory relief for an abuse of discretion. (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 364; *Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 458.) We review for substantial evidence the trial court's factual findings and review de novo the interpretation of municipal ordinances. (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 226; *Carson Citizens for Reform v. Kawagoe* (2009) 178 Cal.App.4th 357, 366; see *Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434 (*Harrington*) [interpretation of a municipal ordinance is a legal issue].)

"'Courts interpret municipal ordinances in the same manner and pursuant to the same rules applicable to the interpretation of statutes.'" (*Harrington*, *supra*, 16 Cal.App.5th at p. 434; see *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1087.) "As with any statutory interpretation, 'our first task . . . is to ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.] In attempting to ascertain such intent, we begin by looking at the language of the statute itself. [Citation.] 'The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.'" (*City of Monterey*, at p. 1087; accord, *Tower Lane Properties v. City of Los Angeles* (2014) 224 Cal.App.4th 262, 268.) "We may not speculate that the enacting body meant something other than what it said [citation], nor add to or alter an ordinance to accomplish a purpose that does not appear on its face [citation]. For example, when a term has been expressly defined, we cannot rewrite that definition to mean something other than what has been prescribed." (*Tower Lane Properties*, at pp. 268-269.)

"[A] city's interpretation of its own ordinance is '"entitled to deference" in our independent review of the meaning or application of the law.'"" (*Harrington*, *supra*, 16 Cal.App.5th at p. 434; see *City of Monterey v. Carrnshimba*, *supra*, 215 Cal.App.4th at p. 1091.) The degree of deference is "situational": We give greater deference to an agency's interpretation where "'the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues

of fact, policy, and discretion.'" (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12; see *Citizens for Beach Rights v. City of San Diego* (2017) 17 Cal.App.5th 230, 241.) We assume the agency's interpretation is "likely to be correct" where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.'" (*Yamaha,* at p. 13; see *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2010) 184 Cal.App.4th 1032, 1041-1042.) "'[A]n agency's view of the meaning and scope of its own [zoning] ordinance is entitled to great weight unless it is clearly erroneous or unauthorized.'" (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193; accord, *Harrington*, at p. 434.) However, """[w]hatever the force of administrative construction . . . final responsibility for the interpretation of the law rests with the courts."""" (*San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 668; see *Yamaha*, at p. 16.)

C. *The Superstore Ordinance Does Not Apply to the Normandie Store*

The zoning administrator presiding at the public hearing on Walmart's 2014 permit renewal rejected the Alliance's argument that the Normandie store's 2011 remodel "trigger[ed] compliance" with the Superstore Ordinance. The zoning administrator reasoned: "There is no ambiguity in the language and intent of the ordinance, which applies only to a 'Major Development Project,' defined in the Municipal Code as . . . 'the construction of, the addition to, or the alteration of, any buildings or structures, which create or add . . . 100,000 square feet or more

of floor area . . . in [enumerated] Zones.'" (Emphasis omitted.) "In this case, the remodeling did not create or add 100,000 square feet of floor area. The floor area already existed legally pursuant to prior City actions and building permits."

We give "significant deference" to the zoning administrator's interpretation of the Superstore Ordinance, conclude it is neither clearly erroneous nor unauthorized, and agree the plain language of the ordinance does not apply to the Normandie store because the 2011 remodel did not "create or add" 100,000 square feet of floor area. (See *Harrington*, *supra*, 16 Cal.App.5th at p. 438 [deferring to a city's interpretation of its building code]; *Anderson First Coalition v. City of Anderson*, *supra*, 130 Cal.App.4th at p. 1193 [approving a city's interpretation of its zoning code]; § 12.24, subd. U.14(a).) The Alliance concedes that the Normandie store was not a Superstore in 2003 when Walmart built it because the Superstore Ordinance did not go into effect until October 2004 and that the Ordinance does not apply retroactively. As noted, the Ordinance defines "Superstore" as a "Major Development Project" whose total "Sales Floor Area" exceeds 100,000 square feet and devotes more than 10 percent of that area to nontaxable merchandise. (§ 12.24, subd. U.14(a).) In turn, the Superstore Ordinance defines "Major Development Project" as one that "creates or adds" 100,000 square feet or more of floor area.[10] As the zoning administrator

---

[10] Section 12.03 defines "floor area" as "[t]he area in square feet confined within the exterior walls of a Building, but not including the area of the following: exterior walls, stairways, shafts, rooms housing Building-operating equipment or machinery, parking areas with associated driveways and ramps, space dedicated to bicycle parking, space for the landing and

and trial court found, and no party disputes, the Normandie store already exceeded 100,000 square feet of floor area before the 2011 remodel. Thus, the addition of 74 square feet of floor area (which Walmart added to the store's exterior, not the interior sales floor) did not "create or add" 100,000 square feet of floor area, and the trial court did not abuse its discretion by denying the Alliance's request for declaratory relief.

The Alliance argues that the Normandie store has always been a "Major Development Project" and that it "transform[ed] into a Superstore" in 2011 when Walmart allegedly began devoting more than 10 percent of its floor area to the sale of nontaxable merchandise.[11] Indeed, the Alliance contends "[i]t was the *internal transformation* in use and character" of the store that "triggered" the Superstore Ordinance. The Alliance's argument, however, fails for two reasons. First, it is inconsistent with the language of the Superstore Ordinance. The Ordinance applies to projects that "create or add" 100,000 square feet or more of floor area. It does not apply to projects that merely "transform" preexisting floor area. (See *Tower Lane Properties v.*

---

storage of helicopters, and Basement storage areas." Section 12.24, subdivision U.14(a) defines "Sales Floor Area" as "the interior building space devoted to the sale of merchandise, but excludes restrooms, office space, storage space, automobile service areas, or open-air garden sales space."

[11] We deny the Alliance's request for judicial notice of Los Angeles Municipal Ordinance No. 165951 defining "'Major' development projects" effective July 15, 1990 as irrelevant. (See *People v. Townsel* (2016) 63 Cal.4th 25, 42, fn. 2; *Hughes Electronics Corp. v. Citibank Delaware* (2004) 120 Cal.App.4th 251, 266, fn. 13.)

City of Los Angeles, *supra*, 224 Cal.App.4th at p. 269 ["when a term has been expressly defined, we cannot rewrite that definition to mean something other than what has been prescribed"].)

Second, the Alliance's proposed interpretation would apply part of the definition of "Superstore," which incorporates the definition of "Major Development Project," retroactively to the Normandie store. A legislative enactment or a municipal ordinance "is presumed to operate prospectively and not retroactively unless a different intention is clearly expressed or implied from the legislative history or the context of the enactment." (*City of Monte Sereno v. Padgett* (2007) 149 Cal.App.4th 1530, 1538; see *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841.) "[U]nless there is an 'express retroactivity provision, a statute will *not* be applied retroactively unless it is *very clear* from extrinsic sources that the Legislature . . . must have intended a retroactive application.'" (*Myers*, at p. 841, original italics.) The Superstore Ordinance does not expressly apply retroactively (and indeed states it became effective October 4, 2004). (See *City of Monte Sereno*, at p. 1538 ["[i]n this case there can be no question that prospective application of the ordinance was intended; its plain language specified that it was to take effect 30 days later"].) There is also no clear indication in the text of the Superstore Ordinance, and the Alliance points to no clear expression in any extrinsic source, the City intended the Superstore Ordinance to apply to all Major Development Projects in existence on the effective date of the Ordinance, even if such projects might one day fulfill the remaining requirements of a Superstore. Given the presumption against retroactive application of municipal

ordinances, the Ordinance's reference to "Major Development Project" in the definition of "Superstore" merely incorporates into that definition the constituent elements of such projects, including the creation or addition of 100,000 square feet or more of floor area.

The Alliance also argues the Normandie store qualifies as a Superstore because the "cumulative sum" of the store's existing square footage combined with the 74 square feet added in 2011 exceeds 100,000 square feet or more of floor area. This argument also relies on the definition of "Major Development Project," which applies to projects that create or add 100,000 square feet or more of floor area and to "the *cumulative sum* of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot as determined by the Director of Planning." (§ 12.24, subd. U.14(a), italics added.) For example, a project consisting of two phases in which 60,000 square feet of floor area is constructed in each phase may constitute a "Major Development Project." But that is not what happened here. Walmart's 2011 remodel was not "part of a larger project" that began in 2003, continued in 2011, and resulted in 100,000 or more of floor area. The Normandie store exceeded 100,000 square feet of floor area before the 2011 remodel, and the remodel added only exterior square footage, not "floor area." (See § 12.03.) In addition, section 12.24, subdivision U.14(a), requires the Director of Planning to determine that "related or successive permits . . . are part of a larger project" before the "cumulative sum" of a project's square footage results in a "Major Development Project." Nothing in the record suggests the Director of Planning made any

such determination in connection with the Normandie store's 2011 remodel.

Finally, the Alliance contends "[a]llowing large retailers in Economic Assistance Areas to later add a significant amount [of] non-taxable merchandise to its store without first analyzing the economic impact on surrounding areas circumvents the very purpose of the [Superstore] Ordinance." As noted, however, the Alliance does not point to any language in the ordinance or its legislative history evincing that purpose, and Walmart points to language suggesting the opposite. Indeed, the economic impact report required of applicants seeking approval of proposed Superstores must address topics including whether the Superstore would result in "the physical displacement of any businesses" in the area, "the demolition of housing," and "the destruction or demolition of any park or other green space, playground, childcare facility, [or] community center." (§ 12.24, subd. U.14(d).) These topics suggest the economic impact report precedes the "construction of, the addition to, or the alteration of, any buildings or structures, which create or add . . . 100,000 square feet or more of floor area," not the transformation or internal remodeling of existing square footage. (See *id.*, subd. U.14(a) [defining "Major Development Project"].) The economic impact report required for proposed Superstores located in Economic Assistance Areas does include topics not necessarily related to the project's physical construction, but these provisions alone do not clearly evidence the City's intent to apply the Superstore Ordinance to projects exceeding 100,000 square feet that predate the Ordinance.

DISPOSITION

The judgment is affirmed. The City's request for judicial notice is granted as to Walmart's August 24, 2017 application for renewal of the conditional use beverage permit, the City's Certificate of Posting for Public Hearing, and the zoning administrator's December 28, 2017 Letter of Determination. The City's request for judicial notice is otherwise denied. The Alliance's request for judicial notice is denied. Walmart is to recover its costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

WILEY, J.*

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