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10 *California ex rel. Rob Bonta, and the California*
11 *Department of Housing and Community*
Development

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ORANGE
15
16

17 **THE PEOPLE OF CALIFORNIA EX REL.**
18 **ROB BONTA, AND THE CALIFORNIA**
19 **DEPARTMENT OF HOUSING AND**
COMMUNITY DEVELOPMENT,

20 Petitioners and Plaintiffs,

21 v.

22 **THE CITY OF HUNTINGTON BEACH, A**
23 **MUNICIPAL CORPORATION; CITY**
24 **COUNCIL OF HUNTINGTON BEACH;**
25 **AL ZELINKA, in his official capacity as**
CITY MANAGER OF HUNTINGTON
BEACH; AND DOES 1-50, INCLUSIVE,

26 Respondents and Defendants.
27
28

Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. Californians continue to suffer under a housing affordability crisis. As the Legislature has found, “[t]he lack of housing . . . is a critical problem that threatens the economic, environmental, and social quality of life in California.” (Gov. Code, § 65589.5, subd. (a)(1)(A), (B).) This crisis is “hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives.” (*Id.*, subd. (a)(2)(A).)

2. A key contributor to this crisis is the failure of local governments to plan for the necessary housing supply. To remedy this, the Legislature requires local governments to include housing elements in their general plans. A housing element must include, among other things, an assessment of housing needs, an inventory of resources and constraints relevant to meeting those needs, and a program to implement the policies, goals, and objectives of the housing element. (Gov. Code, § 65580 et seq.)

3. Local governments that do not prepare a housing element substantially in compliance with state law, thereby failing to plan for an adequate supply of housing, become subject to various legal consequences. For example, a local agency that fails to adopt a substantially compliant housing element becomes subject to the so-called “Builder’s Remedy” provision of the Housing Accountability Act. (Gov. Code, § 65589.5) A local agency without a substantially compliant housing element may not deny, or apply conditions that make infeasible, a housing development project for very low-, low-, or moderate-income households on the basis of inconsistency with a zoning ordinance and land use designation in any general plan element. (Gov. Code, § 65589.5, subd. (d)(5).)

4. In another effort to alleviate the housing crisis, the Legislature has repeatedly amended the housing laws to encourage, and streamline the approval of, permits for accessory dwelling units (“ADUs”) throughout the state. (See generally, Gov. Code, §§ 65852.150, 65852.2, 65852.22.) These units are typically small, easily-constructed residential structures installed as secondary housing units on a single-family property. Current ADU law requires local

1 agencies to approve ADU projects ministerially, or if denied, provide comments to the applicant
2 regarding deficiencies and a description of how the application can be remedied.

3 5. And, in 2021, the Legislature passed the California Housing Opportunity and More
4 Efficiency Act (“HOME Act,” or “SB 9”) to streamline the permitting process and remove
5 regulatory barriers for subdividing residential lots into multifamily housing projects like
6 duplexes, triplexes, and four-plexes that are more affordable to middle-class households.

7 6. The City of Huntington Beach has decided to ignore the laws the Legislature
8 specifically crafted to address California’s housing affordability crisis by barring its staff from
9 accepting and processing ADU- and SB 9-related building permits. The City has done this despite
10 the fact that the availability of decent, suitable, and affordable housing is of vital statewide
11 importance to all Californians.

12 7. In an Action Item at its February 21, 2022 meeting, the Huntington Beach City
13 Council directed its City Manager to “cease the processing of all applications/permits brought to
14 the City by developers under SB 9, SB 10, or ‘state law related’ ADU projects.”¹ (See Exhibit A,
15 at pp. 8-9.) In doing so, the City ignored its own ordinances.

16 8. The City of Huntington Beach has not adopted a current housing element that is
17 substantially in compliance with state law. In failing to adopt a substantially compliant housing
18 element, Huntington Beach is now subject to the Builder’s Remedy.

19 9. At its March 7, 2023 meeting, the Huntington Beach City Council attempted to
20 excuse itself from the consequences of its failure to comply with the housing element law. It
21 introduced Ordinance No. 4285, purporting to ban Builder’s Remedy projects in Huntington
22 Beach. (See Exhibit B.)

23 10. The City Council’s ban on ADU- and SB 9-eligible projects is directly in conflict
24 with the law of this state.

25
26
27 ¹ Senate Bill 10 added section 65913.5 to the Government Code, authorizing cities to
28 *voluntarily* adopt ordinances allowing for higher residential density in a “transit-rich area” or an
“urban infill site,” as defined. Why the Huntington Beach City Council decided to ban projects
that would only be allowed if the City Council itself voted to allow them is unclear.

11. The People of the State of California, by and through Attorney General Rob Bonta, and the Department of Housing and Community Development (“HCD”), bring this action against the City of Huntington Beach, its City Council, and its City Manager (collectively, the “City”) to remedy these violations of state law. The People and HCD request that this Court issue a writ ordering the City to continue processing ADU- and SB 9-eligible projects in accordance with state law. Further, the People and HCD request this court issue a judgment declaring that the City’s ban on acceptance and processing of ADU and SB 9 project applications is in conflict with the applicable law of this state and void, and to issue an injunction instructing the City to refrain from enforcing its unlawful ban. The People and HCD intend to amend this Petition and Complaint should the City follow through on additional attempts to violate state law, such as passing Ordinance No. 4285 to ban Builder’s Remedy projects.

PARTIES

12. The Attorney General, as the chief law enforcement officer of the State of California, brings this action under his broad independent powers to enforce state laws, and on behalf of HCD. (Cal. Const., Art. V, section 13; Gov. Code, § 65585, subd. (j).)

13. HCD is a public agency of the State of California. (Gov. Code, § 12804.) Among other duties, HCD is responsible for developing housing policy and building codes, for regulating manufactured homes and mobile home parks, and for enforcing state housing laws, such as the Housing Accountability Act and state ADU laws, in a manner that meaningfully and positively impacts the provision of housing in all communities across the state.

14. The City of Huntington Beach is a municipal corporation formed and existing under the laws of the State of California, of which it is a political subdivision.

15. The City Council of Huntington Beach is the elected governing body of the City of Huntington Beach.

16. The City Manager of Huntington Beach is the city official responsible for the management and oversight of the City's various departments.

17. The People are unaware of the true names and capacities of respondents and defendants DOES 1 through 50 (the “Doe Respondents”), who are therefore sued by fictitious

1 names pursuant to Code of Civil Procedure section 474. The People allege on information and
2 belief that each such fictitiously named Doe Respondent is responsible or liable in some manner
3 for the events and happenings referred to herein, and the People will seek leave to amend this
4 Petition and Complaint to allege their true names and capacities after the same have been
5 ascertained.

6 **VENUE AND JURISDICTION**

7 18. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
8 sections 187, 1060, and 1085.

9 19. Venue is proper in this Court because the City is located in Orange County and the
10 violations of law alleged herein occurred in Orange County.

11 **BACKGROUND AND FACTUAL ALLEGATIONS**

12 **The Housing Crisis**

13 20. The Legislature has declared that “[t]he availability of housing is of vital statewide
14 importance, and the early attainment of decent housing and a suitable living environment for
15 every Californian . . . is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)

16 21. California has a crisis-level housing shortage that stems from the failure of local
17 governments to approve affordable housing to meet the needs of all Californians. For decades, the
18 Legislature has found that California has been suffering from “a severe shortage of affordable
19 housing, especially for persons and families of low and moderate income” and that “there is an
20 immediate need to encourage the development of new housing.” (*Ruegg & Ellsworth v. City of*
21 *Berkeley* (2021) 63 Cal.App.5th 277, 295, quoting Gov. Code, § 65913.)

22 22. Recently, the Legislature stated plainly that “California has a housing supply and
23 affordability crisis of historic proportions.” (Gov. Code, § 65589.5, subd. (a)(2)(A).) “The
24 consequences of failing to effectively and aggressively confront this crisis are hurting millions of
25 Californians, robbing future generations of the chance to call California home, stifling economic
26 opportunities for workers and businesses, worsening poverty and homelessness, and undermining
27 the state’s environmental and climate objectives.” (*Ibid.*)

28 ///

Housing Elements and the Planning Process

23. State law requires that all local governments adequately plan to meet the housing needs of everyone in the community, at all economic levels. To meet this requirement, every city and county must adopt and periodically update a housing element as part of its general plan. (See Gov. Code, §§ 65302, subd. (c), 65580, et seq.) The law mandating this adoption and periodic update is known as the “Housing Element Law.” (*Id.*, § 65580, et seq.)

24. California’s Housing Element Law requires local governments to adopt plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development, especially for a locality’s lower-income households and workforce. As a result, housing policy in California rests largely on the effective implementation of the housing element contained in the local general plan.

25. The housing element is a roadmap for housing development in a given community. The housing element must identify and analyze existing and projected housing needs, and must include “a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.” (Gov. Code, § 65583.) The housing element must also “identify adequate sites for housing” and “make adequate provision for the existing and projected needs of all economic segments of the community.” (*Ibid.*) Each housing element is also subject to review by HCD.

26. A local jurisdiction’s housing element must be frequently updated to ensure compliance with California’s Housing Element Law. (Gov. Code, § 65588.) Jurisdictions must update their housing elements every five or eight years. (See *id.*, subd. (e)(3).) Each five- or eight-year cycle is known as a “planning period.” (See *id.*, subd. (f)(1).)

27. The process of updating a housing element begins with HCD’s determination of a Regional Housing Need Allocation (“RHNA”) for the region for a given planning period. (Gov. Code, § 65584, subd. (a)(1).) The RHNA sets goals for housing affordable to various income levels. To arrive at the RHNA, HCD starts with demographic population information from the California Department of Finance and uses a formula to calculate a figure for each region’s planning body, known as a “council of governments” (“COG”). Each COG (in this case, the

1 Southern California Association of Governments) also uses its own demographic figures to
2 calculate the regional housing need. Each COG coordinates with HCD to arrive at a final figure,
3 taking into account factors not captured in the calculations. This final figure is the RHNA. (See
4 *id.*, § 65584.01.) Once the RHNA is set, the COG is responsible for allocating the housing need
5 among all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each
6 local government must then prepare a housing element that identifies adequate sites to
7 accommodate that jurisdiction’s fair share of the RHNA at each income level. (*Id.*, §§ 65583,
8 65583.2.))

9 28. Each local government must submit its draft housing element to HCD before
10 adoption. (Gov. Code, § 65585, subd. (b)(1).) HCD must review the draft element and issue
11 findings as to whether the draft substantially complies with the Housing Element Law. (*Id.*,
12 subds. (b)(3), (d).) After adopting the final housing element, the local government must again
13 submit the element to HCD, and HCD must again review and report its findings to the local
14 government. (*Id.*, subds. (g), (h).)

15 **The Housing Accountability Act and the “Builder’s Remedy”**

16 29. The Legislature originally enacted the Housing Accountability Act (“HAA”) in 1982
17 in an effort to compel local governments to approve more housing, and has repeatedly amended
18 the law to increase its effectiveness. (Gov. Code, § 65589.5, subd. (a); *Ruegg*, *supra*, 63
19 Cal.App.5th at pp. 295–297.) In 1990, the Legislature made the HAA expressly applicable to
20 charter cities. (*California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (2021) 68
21 Cal. App. 5th 820, 835.)

22 30. In general, the HAA provides that when a proposed housing development complies
23 with applicable general plan, zoning, and development policies, the local agency may disapprove
24 the project (or approve it on condition that it be developed at lower density) only if the local
25 agency finds that the project would have a specific, adverse, and unavoidable impact on public
26 health or safety. (Gov. Code, § 65589.5, subd. (j)(1).)

27 31. Specifically, a local agency must approve any housing development project that
28 complies with locally adopted objective standards, unless it can make two written findings based

1 on a preponderance of evidence in the record. (Gov. Code, § 65589.5, subd. (j)(1).) First, the
2 proposed development must have a significant and adverse impact on public health or safety. (*Id.*,
3 subd. (j)(1)(A).) Second, disapproval must be the only means of mitigating or avoiding the
4 impact. (*Id.*, subd. (j)(1)(B).) These findings must be project-specific, and the public health or
5 safety impact must constitute “a significant, quantifiable, direct, and unavoidable impact, based
6 on objective, identified written public health or safety standards, policies, or conditions as they
7 existed on the date the application was deemed complete.” (*Id.*, subd. (j)(1)(A).)

8 32. If the local agency considers a proposed housing development project to be
9 inconsistent, not in compliance, or not in conformity with an applicable objective standard, it
10 must provide the project applicant with “written documentation” that identifies the applicable
11 provision or provisions, along with “an explanation of the reason or reasons it considers the
12 housing development to be inconsistent, not in compliance, or not in conformity” with those
13 standards. This explanation is due within 30 days an application is deemed complete for a
14 housing development with 150 or fewer housing units, or within 60 days an application is deemed
15 complete for a housing development with more than 150 housing units. (*Id.*, subd. (j)(2)(A).) If
16 this documentation is not provided by the applicable deadline, the application is deemed
17 consistent with the applicable standards. (*Id.*, subd. (j)(2)(B).)

18 33. The foregoing provisions of subdivision (j) apply to all housing development projects.
19 Where a proposed housing development includes affordable housing, a local agency’s discretion
20 to deny the project is even further constrained. (*Id.*, subd. (d).) An affordable housing project may
21 only be denied under five specific and narrow circumstances.

22 34. The 1990 HAA amendments modified subdivision (d) to provide that cities and
23 counties could only deny, or apply conditions that make infeasible, a housing development
24 project for very low-, low- or moderate-income households or an emergency shelter if they are
25 able to make one of five specific findings. (Gov. Code, § 65589.5, subd. (d).) Those five findings,
26 paraphrased, are:

- 27 (1) The city or county has met or exceeded its RHNA for the proposed income
28 categories in the development.

- 1 (2) The housing development or emergency shelter would have a specific adverse
2 impact on public health and safety, and there is no way to mitigate or avoid the
3 impact without making the development unaffordable. Such an impact must be
4 based on objective, written public health or safety standards in place when the
5 application was deemed complete.
- 6 (3) The denial or imposition of conditions is required to comply with state or federal
7 law, and there is no feasible method to comply without making the development
8 unaffordable.
- 9 (4) The project is proposed on land zoned for agriculture or resource preservation
10 that is surrounded on at least two sides by land being used for agriculture or
11 resource preservation, or there are not adequate water or sewage facilities to
12 serve the project.
- 13 (5) The project is inconsistent with both the zoning ordinance and the land use
14 designation as specified in any general plan element, and the jurisdiction has
15 adopted a substantially compliant housing element.

16 35. The last of these five findings, subdivision (d)(5), is the source of the so-called
17 Builder's Remedy. By negative implication, if a locality has *not* adopted a housing element in
18 substantial compliance with state law, it *cannot* deny a project that includes affordable housing on
19 grounds that it does not comply with a zoning or land-use designation.

20 **The ADU Laws**

21 36. One effective means of increasing the housing supply is by removing regulatory
22 barriers to accessory dwelling units, or ADUs. ADUs are sometimes also known as "granny
23 flats," "in-law units," "backyard cottages," or "secondary units," among other names. These small
24 structures provide a cost-effective solution to increasing the housing supply on a rapid timescale.

25 37. ADUs have many benefits. They are affordable to construct, since they typically use
26 comparatively inexpensive wood frame construction, and no new land acquisition or major
27 infrastructure is required. ADUs can also provide a source of income for homeowners when
28 rented, increasing incentives for homeowners to build ADUs on their property. In addition, ADUs

1 enable extended families to reside close to one another, and for seniors to age in place with family
2 members while maintaining an independent living space. (See generally, Accessory Dwelling
3 Units, Department of Housing and Community Development, available at
4 <https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units>.)

5 38. In recent years, the Legislature has repeatedly amended the housing laws to legalize
6 and promote the construction of accessory dwelling units. In 2018, as part of a package of updates
7 to the housing laws that, among other things, made the ADU laws applicable to charter cities for
8 the first time, the Legislature found and declared all of the following:

9 (1) Accessory dwelling units are a valuable form of housing in California.

10 (2) Accessory dwelling units provide housing for family members, students, the elderly,
11 in-home health care providers, the disabled, and others, at below market prices within
12 existing neighborhoods.

13 (3) Homeowners who create accessory dwelling units benefit from added income, and
14 an increased sense of security.

15 (4) Allowing accessory dwelling units in single-family or multifamily residential zones
16 provides additional rental housing stock in California.

17 (5) California faces a severe housing crisis.

18 (6) The state is falling far short of meeting current and future housing demand with
19 serious consequences for the state's economy, our ability to build green infill consistent
20 with state greenhouse gas reduction goals, and the well-being of our citizens,
21 particularly lower and middle-income earners.

22 (7) Accessory dwelling units offer lower cost housing to meet the needs of existing and
23 future residents within existing neighborhoods, while respecting architectural character.

24 (8) Accessory dwelling units are, therefore, an essential component of California's
25 housing supply.

26 (Gov. Code, § 65852.150, subd. (a).)

27 39. The bulk of the ADU laws are set forth at Government Code section 65850 et seq.
28 These laws broadly restrict the ability of local agencies, whether general law or charter cities, to

1 deny ADU projects within their jurisdiction, and set tight deadlines for processing applications.

2 40. Relevant to this litigation, Government Code section 65852.2, subdivisions (a)(3)(A)
3 and (b)(1), require permitting agencies to approve or deny ADU applications ministerially and
4 without discretionary review within 60 days of a complete application's submittal. Under both
5 provisions, "[i]f the local agency has not acted upon the completed application within 60 days,
6 [an] application shall be deemed approved." In addition, Government Code section 65852.2,
7 subdivision (e)(1), states "a local agency shall ministerially approve an application for a building
8 permit within a residential or mixed-use zone to create" ADUs that meet specific requirements.

9 41. In addition, a local agency that denies an ADU application must provide "in writing a
10 full set of comments to the applicant with a list of items that are defective or deficient and a
11 description of how the application can be remedied by the applicant." (Gov. Code, § 65852.2,
12 subd. (b)(2).)

13 42. Government Code section 65852.2, subdivision (a)(7), further provides: "No other
14 local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit
15 or a use permit under this subdivision."

16 **Senate Bill 9**

17 43. The Legislature introduced Senate Bill 9 in 2021 in an effort to streamline the process
18 for creating duplexes or for subdividing an existing lot. SB 9 restrained the discretion of local
19 agencies by creating a ministerial process for such project approvals.

20 44. SB 9 ultimately allows up to four homes on lots where only one existed previously,
21 by permitting existing single-family homes to be converted to duplexes or single-family lots to be
22 subdivided into two lots on which two duplexes could be built. (See SB 9 Senate Floor Analysis,
23 August 28, 2021, available at
24 https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB9.)

25 45. SB 9 added, among other provisions, sections 65852.21 and 66411.7 to the
26 Government Code. Section 65852.21 requires local agencies to approve a proposed housing
27 development consisting of two residential units within a single-family zone on a ministerial basis.
28 Section 66411.7 requires local agencies to approve a lot split in a single-family zone on a

1 ministerial basis. Both provisions became operative on January 1, 2022.

2 46. SB 9 placed limits on a local agency’s ability to deny proposed projects, but it did not
3 entirely eliminate local agencies from the approval process. Local agencies are still permitted to
4 “impose objective zoning standards, objective subdivision standards, and objective design review
5 standards,” so long as such standards do not have “the effect of physically precluding the
6 construction of up to two units or...would physically preclude either of the two units from being at
7 least 800 square feet in floor area” within a single-family zone. (Gov. Code, § 65852.21, subd.
8 (b).) Similarly, local agencies can impose “objective” standards with respect to lot splits, so long
9 as those standards do not “have the effect of physically precluding the construction of two units
10 on either of the resulting parcels or that would result in a unit size of less than 800 square feet”
11 within a single-family zone. (Gov. Code, § 66411.7, subd. (c).) Finally, the legislative body of a
12 local agency may reject an SB 9 project if it finds, based on a preponderance of the evidence, that
13 the proposed project would have a “specific, adverse impact” on “public health and safety or the
14 physical environment and for which there is no feasible method to satisfactorily mitigate or avoid
15 the specific, adverse impact.” (Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d); see also
16 65589.5, subd. (d)(2).)

17 **The Housing Crisis Act**

18 47. The Housing Crisis Act of 2019 (“HCA”) prohibits a local government from “enact[ing]
19 a development policy, standard, or condition” that would have the effect of “[c]hanging the
20 general plan land use designation, specific plan land use designation, or zoning of a parcel or
21 parcels of property to a less intensive use or reducing the intensity of land use within an existing
22 general plan land use designation, specific plan land use designation, or zoning district in effect at
23 the time of the proposed change, below what was allowed under the land use designation or
24 zoning ordinances ... in effect on January 1, 2018.” (Gov. Code, § 66300, subd. (b)(1)(A).) The
25 statute defines “reducing the intensity of land use” to include “any other action that would
26 individually or cumulatively reduce the site’s residential development capacity.” (*Ibid.*)

27 48. The HCA also prohibits a local government from “[i]mposing a moratorium or
28 similar restriction or limitation on housing development ... within all or a portion of the

1 jurisdiction ... other than to specifically protect against an imminent threat to the health and
2 safety of persons residing in, or within the immediate vicinity of, the area subject to the
3 moratorium....” (Gov. Code, § 66300, subd. (b)(1)(B)(i).)

4 49. In addition, a local agency shall not enforce such “a moratorium or other similar
5 restriction on or limitation of housing development until it has submitted the ordinance to, and
6 received approval from, [HCD].” (Gov. Code, § 66300, subd. (b)(1)(B)(ii).) If HCD denies
7 approval, “that ordinance shall be deemed void.” (*Ibid.*)

8 **Huntington Beach’s Violations of State Housing Laws**

9 50. At its February 21, 2023 meeting, the Huntington Beach City Council adopted Action
10 Item No. 23-172 (the “Action Item”), directing the City Manager to “cease the processing of all
11 applications/permits brought to the City by developers under SB 9, SB 10, or ‘state law related’
12 ADU projects, until the courts have adjudicated the matter(s).”² The Action Item also directs the
13 City Attorney to “take any legal action necessary to challenge SB 9 and SB 10 and the laws that
14 permit ADU’s [sic].”

15 51. In deliberating over the Action Item, the City did not cite any statutory exemption
16 under SB 9 as a basis for the Action Item, nor did it make any findings that the Action Item is
17 necessary to protect the public from an immediate, adverse impact to health or safety.

18 52. On February 22, 2023, the City, pursuant to its Action Item, began refusing to accept
19 any ADU and SB 9 permit applications. (See Planning Division, City of Huntington Beach’s
20 website, available at <https://www.huntingtonbeachca.gov/government/departments/planning/>, last
21 visited March 7, 2023 [stating that, effective February 22, 2023, no SB 9 or ADU permit
22 applications are being accepted until “any legal challenges are resolved.”].) The City did so even
23 though it had not, and has not yet, initiated any legal action challenging SB 9 or the state’s ADU
24 laws.

25 53. The Action Item, by instructing City staff to reject SB 9 projects that are otherwise
26 compliant with applicable objective standards without making any of the written findings

27 ² As noted in footnote 1 *supra*, SB 10 permits local agencies to adopt ordinances allowing
28 for increased density near transit-rich and/or urban infill sites. It is a voluntary, opt-in upzoning
law.

1 required by law, violates the Housing Accountability Act.

2 54. The Action Item, by imposing a moratorium on SB 9 and ADU permit application
3 processing, also violates the Housing Crisis Act.

4 55. In addition, at its March 7, 2023 meeting, the City Council introduced Ordinance No.
5 4285, which would amend section 202.04 of the Huntington Beach Zoning and Subdivision
6 Ordinance to “expressly prohibit[] the processing or approval of any application for a housing
7 development project or any project not in conformance with the zoning and General Plan land use
8 designation ... regardless of the so-called ‘Builder’s Remedy’ (under the Housing Accountability
9 Act or any other State law), that portend to allow developers of affordable housing projects to
10 bypass the zoning code and general plan of cities that are out of compliance with the Housing
11 Element Law.” (See Exhibit B.)

12 56. The proposed Ordinance No. 4285 makes no specific supporting findings other than
13 to state that it comports with the City’s General Plan.

14 57. Ordinance No. 4285, and its purported ban on Builder’s Remedy projects, is directly
15 in conflict with the Housing Accountability Act.

16 58. Ordinance No. 4285 also violates the Housing Crisis Act, and if invoked on certain
17 proposed projects subject to other state law protections, stands to violate state fair housing laws
18 under Government Code sections 8899.50 and 65008, density bonus law under Government Code
19 section 65915 et seq., and ministerial approval laws under SB 35 (Gov. Code § 65913.4), SB 6
20 and AB 2011 (Gov. Code §§ 65852.24 and 65912.110).

21 **These Violations Occurred Despite Numerous Warnings**

22 59. The City Council knowingly violated state laws, as alleged above, despite numerous
23 warnings from both HCD and the Attorney General’s Office to both the City Council, the City’s
24 Planning Commission, and the City Attorney.

25 60. On January 9, 2023, HCD issued a Notice of Potential Violation to the City’s
26 Planning Commission with respect to the recommendation to adopt Ordinance No. 4285 banning
27 Builders’ Remedy projects.
28

61. On February 13, 2023, HCD issued a second Notice of Potential Violation regarding Ordinance No. 4285. That same day, the Attorney General's Office also transmitted a letter to City Attorney Michael Gates warning that, if adopted, Ordinance No. 4285 would conflict with state law.

62. On February 21, 2023, HCD issued a Notice of Potential Violation to the City Council regarding the Action Item to cease accepting ADU permit applications.

63. That same day, the Attorney General's office transmitted a letter to the City Council regarding the Action Item to cease accepting SB 9 permit applications.

64. On February 22, 2023, HCD issued a Notice of Violation regarding the City Council's decision to adopt the Action Item.

65. On February 23, 2023, the Attorney General's Office transmitted a letter to the City Attorney requesting him to confirm that (1) the City will refuse to process any permit applications made under SB 9, including permit applications filed pursuant to the City of Huntington Beach's Zoning Text Amendment 22-002, (2) the City is no longer processing any ADU applications, and (3) the City Attorney has not yet initiated any legal action challenging SB 9 or the state's ADU laws.

66. On February 27, 2023, the City Attorney responded to the Attorney General's Office by email, stating that (1) he did not believe there to be any pending SB 9 permit applications, (2) the City continued to process existing applications but would not be taking new applications, and (3) he had not yet initiated any legal action at the City Council's direction, but would be consulting with the City Council in closed session on March 7th to discuss the matter.

67. On March 6, 2023, HCD issued another Notice of Potential Violation with respect to the proposed Ordinance No. 4285 banning Builder's Remedy projects.

FIRST CAUSE OF ACTION

**Writ of Mandate (Code Civ. Proc., § 1085; Gov. Code, § 65585, subd. (n)) – Violation of
Gov. Code, §§ 65852.2 (ADU), 65852.21, 66411.7 (SB 9)
[Against All Defendants]**

68. Petitioners incorporate by reference each and every allegation of the preceding paragraphs.

1 69. Under state law, the City must process ADU applications ministerially and without
2 discretionary review within 60 days of a complete application’s submittal. (Gov. Code, §
3 65852.2.)

4 70. The City must also, before denying any ADU application, provide “in writing a full
5 set of comments to [an] applicant with a list of items that are defective or deficient and a
6 description of how the application can be remedied by the applicant.” (Gov. Code, § 65852.2,
7 subd. (b)(2).)

8 71. Government Code section 65852.2, subdivision (a)(7), further provides “[n]o other
9 local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit
10 or a use permit under this subdivision.”

11 72. Under SB 9, the City must process, on a ministerial basis, (1) proposed housing
12 developments consisting of two residential units within a single-family zone, and (2) lot splits
13 within a single-family zone. (Gov. Code, §§ 65852.21, 66411.7.)

14 73. The City is not complying with these mandatory duties. As alleged above, the City
15 has ceased accepting and processing ADU and SB 9 permit applications.

16 74. The City’s failure to process these applications is arbitrary, capricious, entirely
17 lacking in evidentiary support, contrary to established public policy, unlawful, procedurally
18 unfair, an abuse of discretion, and a failure to act as required by law.

19 75. Accordingly, a writ of mandate should issue ordering the City to comply with the
20 ADU law and SB 9. (Gov. Code, §§ 65852.2, 65852.21, 66411.7.)

21 76. Petitioners have a beneficial interest in the issuance of such a writ and have a
22 significant interest in ensuring that the City complies with the law.

23 77. Petitioners have exhausted all required administrative remedies, or are excused from
24 exhausting their remedies due to the futility of pursuing such remedies, among other things.

25 78. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law.
26 The only remedy provided by law to obtain relief is this Petition for Writ of Mandate pursuant to
27 Code of Civil Procedure section 1085.
28

1 **SECOND CAUSE OF ACTION**
2 **Declaratory and Injunctive Relief (Code Civ. Proc., § 1060; Gov. Code, § 65585, subd. (n)) –**
3 **Violation of Gov. Code, § 66300 (Housing Crisis Act of 2019)**
4 **[Against All Defendants]**

5 79. Petitioners incorporate by reference each and every allegation of the preceding
6 paragraphs.

7 80. There is a controversy between Petitioners and the City as to whether the City's ban
8 on ADU and SB 9 projects complies with the Housing Crisis Act of 2019. As alleged above,
9 Petitioners believe that the City's ban on ADU and SB 9 projects does not comply with the HCA
10 because it reduces the intensity of land use and is an effective moratorium on housing
11 development. Petitioners further believe that the City does not intend to become compliant with
12 these laws. Further, based on information and belief, Petitioners allege that the City is deliberately
13 defying applicable state law. It is necessary and appropriate for the Court to render a declaratory
14 judgment that sets forth the parties' legal rights and obligations with respect to whether the City's
15 ban is compliant with the HCA.

16 81. In addition to these remedies, Petitioners are entitled to prospective relief directing
17 the City to comply with the HCA.

18 82. Petitioners therefore request a declaration that the City's ban on ADU and SB 9
19 projects violates the Housing Crisis Act of 2019. (Gov. Code, § 66300.)

20 **THIRD CAUSE OF ACTION**
21 **Declaratory and Injunctive Relief (Code Civ. Proc., § 1060; Gov. Code, § 65585, subd. (n)) –**
22 **Violation of Gov. Code, § 65589.5 (Housing Accountability Act)**
23 **[Against All Defendants]**

24 83. Petitioners incorporate by reference each and every allegation of the preceding
25 paragraphs.

26 84. There is a controversy between Petitioners and the City as to whether the City's ban
27 on SB 9 projects complies with the Housing Accountability Act. As alleged, Petitioners believe
28 that the City's ban on SB 9 projects does not comply with the HAA because it requires the City to
reject housing projects that are otherwise compliant with locally adopted objective standards
without making any of the written findings required by law. Petitioners further believe that the

1 City does not intend to become compliant with the HAA. Further, based on information and
2 belief, Petitioners allege that the City is deliberately defying applicable state law.

3 85. It is necessary and appropriate for the Court to render a declaratory judgment that sets
4 forth the parties' legal rights and obligations with respect to whether the City's ban violates the
5 HAA.

6 86. In addition to these remedies, Petitioners are entitled to prospective relief directing
7 the City to comply with the HAA.

8 87. Petitioners therefore request a declaration that the City's ban on SB 9 projects
9 violates the Housing Accountability Act. (Gov. Code, § 65589.5.)

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioners pray as follows:

- 12 1. For a writ of mandate ordering the City to continue processing SB 9 and ADU permit
13 applications in compliance with SB 9 and ADU laws. (Gov. Code, §§ 65852.2;
14 65852.21; 66411.7; 65586, subd. (n).)
 - 15 2. For a declaration that the City is in violation of the Housing Crisis Act of 2019, and its
16 moratorium on SB 9 and ADU permit applications is in conflict with the law of this
17 state and void. (Gov. Code, §§ 66300; 65585, subd. (n))
 - 18 3. For a declaration that the City is subject to the Housing Accountability Act and its ban
19 on SB 9 projects is in conflict with the law of this state and void. (Gov. Code, §§
20 65589.5; 65585, subd. (n).)
 - 21 4. For an injunction requiring the City to comply with the Housing Crisis Act of 2019 and
22 to refrain from enforcing its moratorium on SB 9 and ADU permit applications. (Gov.
23 Code, §§ 66300; 65585, subd. (n).)
 - 24 5. For an injunction requiring the City to comply with the Housing Accountability Act and
25 to refrain from enforcing its ban on SB 9 projects. (Gov. Code, §§ 65589.5; 65585,
26 subd. (n))
- 27
28

EXHIBIT A



AGENDA

City Council/Public Financing Authority

Tuesday, February 21, 2023

Special Meeting of the Housing Authority

3:30 PM Study Session

6:00 PM Regular Business Meeting

MAYOR AND CITY COUNCIL

TONY STRICKLAND, Mayor
GRACEY VAN DER MARK, Mayor Pro Tem
RHONDA BOLTON, Councilmember
PAT BURNS, Councilmember
DAN KALMICK, Councilmember
CASEY McKEON, Councilmember
NATALIE MOSER, Councilmember

Council Chambers

2000 Main Street
Huntington Beach, CA 92648

--or--

Virtual via Zoom Webinar

STAFF

AL ZELINKA, City Manager
MICHAEL E. GATES, City Attorney
ROBIN ESTANISLAU, City Clerk
ALISA BACKSTROM, City Treasurer

IN-PERSON PUBLIC PARTICIPATION/ZOOM ACCESS: Members wishing to attend the meeting in person are encouraged to wear a face covering.

Assembly Bill 361 (AB 361) authorizes public meetings to take place via teleconference (i.e., virtual using Zoom), or in person if in part. State and Local officials continue to recommend measures to promote social distancing. In addition to this hybrid format, alternate ways to view City Council meetings live or on-demand remain: livestreamed on HDTV Channel 3 (replayed on Wednesday's at 10:00 a.m. and Thursday's at 6:00 p.m.); live and archived meetings for on-demand viewing accessed from <https://huntingtonbeach.legistar.com/calendar>; or, from any Roku, Fire TV or Apple device by downloading the Cablecast Screenweave App and searching for the City of Huntington Beach channel.

PUBLIC COMMENTS: Individuals wishing to provide a comment on agenda items or non-agenda items, including Study Session, Closed Session, and Public Hearing, may do so in person by completing a **Request to Speak** form delivered to the City Clerk, or from a virtual location by entering **Zoom Webinar ID 971 5413 0528** via computer device, or by phone at **(669) 900-6833**. The **Zoom Webinar** can be accessed here: <https://huntingtonbeach.zoom.us/j/97154130528>. Instructions for those utilizing computer devices to request to speak are provided in each section of the agenda where public comments are accepted.

Members of the public unable to personally participate in the meeting but interested in communicating with the City Council on agenda-related items are encouraged to submit a written (supplemental) communication via email at SupplementalComm@Surfcity-hb.org, or City.Council@surfcity-hb.org. Supplemental Communications are public record, and if received by 2:00 PM on the day of the meeting, will be distributed to the City Council prior to consideration of agenda-related items, posted to the City website, and announced, but not read, at the meeting. Communications received following the 2:00 PM deadline will be incorporated into the administrative record.

MEETING ASSISTANCE NOTICE: In accordance with the Americans with Disabilities Act, services are available to members of our community who require special assistance to participate in public meetings. If you require special assistance, 48-hour prior notification will enable the City to make reasonable arrangements for an assisted listening device (ALD) for the hearing impaired, American Sign Language interpreters, a reader during the meeting and/or large print agendas. Please contact the City Clerk's Office at (714) 536-5227 for more information.

3:30 PM - COUNCIL CHAMBERS

CALL TO ORDER

ROLL CALL

Kalmick, Moser, Van Der Mark, Strickland, McKeon, Bolton, Burns

CITY COUNCILMEMBER COMMENTS (3-Minute Time Limit) - The Mayor will facilitate a voluntary opportunity for members of the Huntington Beach City Council to individually make brief comments to the public. Please note that the Brown Act does not allow for lengthy comments, discussion, or action on topics that are not on the agenda.

ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATIONS (Received After Agenda Distribution)

PUBLIC COMMENTS (3 Minute Time Limit)

At this time, the City Council will receive comments from members of the public regarding any topic, including items on the Study Session and/or Closed Session agendas. Individuals wishing to provide a comment on item(s) may do so in person by filling out a Request to Speak form delivered to the City Clerk. All speakers are encouraged, but not required to identify themselves by name. Each speaker may have up to 3 minutes unless the volume of speakers warrants reducing the time allowance.

Please note that the Brown Act does not allow discussion or action on topics that are not on the agenda. Members of the public who would like to speak directly with a Councilmember on an item not on the agenda may consider scheduling an appointment by contacting the City Council's Administrative Assistant at (714) 536-5553 or emailing the entire City Council at city.council@surfcity-hb.org.

STUDY SESSION

1. [23-158](#) City's Infrastructure Report Card

RECESS TO CLOSED SESSION

CLOSED SESSION

2. [23-151](#) CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION.
(Paragraph (1) of subdivision (d) of Section 54956.9). Name of case:
Gapezzani (Gary) v. John Romero, City of Huntington Beach; OCSC
Case No.: 30-2021-01225030.
3. [23-161](#) CONFERENCE WITH LABOR NEGOTIATORS (Gov. Code section

54957.6.) Agency designated representatives: Al Zelinka, City Manager, and Peter Brown, Chief Negotiator; also in attendance: Jose Rodriguez, Human Resources Manager; Travis Hopkins, Assistant City Manager; Michael E. Gates, City Attorney; Eric Parra, Chief of Police; and Sunny Rief, Acting Chief Financial Officer. Employee Organization: Police Officers' Association (POA).

4. [23-170](#) CONFERENCE WITH LEGAL COUNSEL-LITIGATION (Gov. Code section 54956.9(d)(4).): Number of Matters: One (1).

6:00 PM – COUNCIL CHAMBERS

RECONVENE CITY COUNCIL/PUBLIC FINANCING AUTHORITY MEETING AND CALL TO ORDER THE SPECIAL MEETING OF THE HOUSING AUTHORITY

ROLL CALL

Kalmick, Moser, Van Der Mark, Strickland, McKeon, Bolton, Burns

PLEDGE OF ALLEGIANCE

INVOCATION

In permitting a nonsectarian invocation, the City does not intend to proselytize or advance any faith or belief. Neither the City nor the City Council endorses any particular religious belief or form of invocation.

5. [22-1118](#) Chaplain Roger Wing with the Huntington Beach Fire Department

CLOSED SESSION REPORT BY CITY ATTORNEY

ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATIONS (Received After Agenda Distribution)

PUBLIC COMMENTS (3 Minute Time Limit)

At this time, the City Council will receive comments from members of the public regarding any topic, including items on the open session agenda. Individuals wishing to provide a comment may do so in person by filling out a Request to Speak form delivered to the City Clerk. All speakers are encouraged, but not required to identify themselves by name. Each speaker may have up to 3 minutes unless the volume of speakers warrants reducing the time allowance.

Please note that the Brown Act does not allow discussion or action on topics that are not on the agenda. Members of the public who would like to speak directly with a Councilmember on an item not on the agenda may consider scheduling an appointment by contacting the City Council's Administrative Assistant at (714) 536-5553 or emailing the entire City Council at

city.council@surfcity-hb.org.

While the City Council welcomes public involvement and supports and defends free speech, the City Council rejects comments from anyone that are discriminatory, defamatory or otherwise not protected free speech. Those comments will not inform nor be considered by the City Council and may be cause for the Mayor to interrupt the public speaker. Such public comments will not be consented to or otherwise adopted by the City Council in its discussions and findings for any matter tonight.

COUNCIL COMMITTEE APPOINTMENT ANNOUNCEMENTS

Councilmembers may make brief announcements on any appointments made to a board, committee, or commission. Councilmembers may not discuss or take any action on these announcements. Announcements are limited to 1 minute.

AB 1234 REPORTING

Per AB 1234 (Government Code Section 53232.3(d)) Councilmembers who attend a meeting, conference, or similar event at the expense of the City must provide a brief report of the meeting, conference, or similar event during the next regular City Council meeting. Reports are limited to 1 minute.

OPENNESS IN NEGOTIATION DISCLOSURES

Councilmembers must publicly disclose any meetings or communications with City employee associations, related to the negotiations of labor agreements. Disclosures are limited to 1 minute and must be made by the next regular City Council Meeting.

CITY MANAGER'S REPORT

6. [23-174](#) Main Street Redevelopment Project - Additional Outreach Update
7. [23-159](#) Update on the Review of the City's Membership in the Orange
County Power Authority (OCPA) Joint Power Authority

CITY CLERK'S REPORT

8. [23-166](#) Presentation on the Safe and Sane Fireworks Stand Application and
Lottery Process for 2023

CONSENT CALENDAR

Office of City Clerk

9. [23-146](#) Approve and Adopt Minutes

Recommended Action:

Approve and adopt the City Council/Public Financing Authority regular meeting and the Housing Authority special meeting minutes of February 7, 2023.

Office of City Manager

10. [23-154](#) City Council to consider positions by Intergovernmental Relations Committee (IRC)

Recommended Action:

Consider one or more of the actions on the following issues proposed by the IRC:

1. Submit a Letter of Support for SB 381 (Min) - Electric Bicycles Study; and,
2. Recommend that staff issue Request for Qualifications for State Legislative Advocacy Services and Federal Legislative Advocacy Services separately.

Community Development Department

11. [23-104](#) Approve and authorize execution of Amendment No. 1 to License Agreement between the City of Huntington Beach and PCH Beach Resort, LLC, for the beach concession at 21529 Pacific Coast Highway

Recommended Action:

A) Approve "Amendment No. 1 to License Agreement Between the City of Huntington Beach and PCH Beach Resort, LLC" for the Concession Stand at 21529 Pacific Coast Highway; and,

B) Authorize the Mayor, City Manager, and City Clerk to execute the Amendment and other related documents.

12. [23-147](#) Consider for approval Bonanni Development Company IV, LLC Affordable Housing Agreement for the development of 35 ownership units at 19070 Holly Lane

Recommended Action:

A) Approve the "Affordable Housing Agreement for 19070 Holly Lane, Huntington Beach by and Between the City of Huntington Beach, a California Municipal Corporation and Bonanni Development Company IV, LLC, a Limited Liability Corporation" for the development of 35 ownership units at 19070 Holly Lane; and,

B) Authorize the City Manager or their designee to implement and execute the Affordable Housing Agreement for the Project, including all necessary related documents; and,

C) Authorize the City Manager to execute an amendment to the Affordable Housing Agreement, as prepared by the City Attorney, should the Developer upon completion of the Project decide to rent instead of sell the townhomes due to market conditions; and,

D) Authorize the Housing Authority Executive Officer or their designee to execute all necessary implementing agreements and related documents.

Fire Department

13. [22-807](#) **Authorize execution of an agreement with Toyota for vehicles for Marine Safety, Beach Parking, and Beach Maintenance and approve appropriation of funds**

Recommended Action:

Authorize the Mayor and City Clerk to execute "Promotional Agreement Between the City of Huntington Beach and Southern California Toyota Dealers Advertising Association" to provide 24 vehicles for Marine Safety, Beach Parking, and Beach Maintenance uses; approve the appropriation of \$216,869 in Equipment Replacement Fund 324 and \$22,150 in the General Fund Fleet Maintenance business unit 10085705 to upfit and maintain the vehicles.

14. [23-099](#) **Adopt Resolution No. 2023-04 authorizing certain City Officials to execute Grant Applications and Documents**

Recommended Action:

Adopt Resolution No. 2023-04, "A Resolution of the City Council of the City of Huntington Beach Authorizing Certain City Officials to Execute Grant Applications and Documents."

15. [23-100](#) **Adopt Resolution No. 2023-05 authorizing certain City Officials to execute Applications and Documents to Obtain Disaster and Emergency Relief**

Recommended Action:

Adopt Resolution No. 2023-05, "A Resolution of the City Council of the City of Huntington Beach Authorizing Certain City Officials to Execute Applications and Documents to Obtain Disaster and Emergency Relief."

16. [23-139](#) **Adopt Resolution No. 2023-06 to accept Grant Funds from the California Department of Fish and Wildlife, Office of Spill Prevention and Response for Oil Response Equipment**

Recommended Action:

Adopt Resolution No. 2023-06, "A Resolution of the City Council of the City of Huntington Beach to Accept Grant Funds from the California Department of Fish and Wildlife, Office of Spill Prevention and Response for Oil Spill Response Equipment."

Police Department

17. [23-144](#) **Adopt Ordinance No. 4275 to Amend to Huntington Beach Municipal**

**Code Chapter 13.08.070 Relating to Dogs and Other Animals -
Approved for Introduction February 7, 2023 - Vote: 7-0**

Recommended Action:

Adopt Ordinance No. 4275, "An Ordinance of the City of Huntington Beach Amending Chapter 13.08 of the Huntington Beach Municipal Code Relating to Dogs and Other Animals."

Public Works Department

18. [23-054](#) **Award and authorize the execution of a construction contract with Mehta Mechanical Company, Incorporated, in the amount of \$10,648,600 for the Heil Avenue Storm Water Pump Station Replacement Project, CC-1293**

Recommended Action:

A) Accept the lowest responsive and responsible bid submitted by the Mehta Mechanical Company, Incorporated, in the amount of \$10,648,600; and,

B) Authorize the Mayor and the City Clerk to execute a construction contract in a form approved by the City Attorney.

19. [23-122](#) **Authorize the City Manager to Sign a Letter of Commitment for the Local Groundwater Supply Improvement Project ("Local SiP") Application for Grant Funds from the U.S. Department of the Interior's Bureau of Reclamation WaterSMART Program and Authorize Grant Matching Funds in the Amount of \$25,000**

Recommended Action:

Authorize the City Manager to sign and submit the Letter of Commitment (Attachment 1) to Mesa Water District for the Local SiP application for grant funds from the U.S. Department of the Interior's Bureau of Reclamation WaterSMART Program and authorize grant matching funds in the amount of \$25,000.

ADMINISTRATIVE ITEMS

20. [23-157](#) **Year-End Audit Results for the FY 2021/22 Annual Comprehensive Financial Report (ACFR), Fiscal Year 2022/23 Mid-Year Budget Adjustments, and Fiscal Year 2022/23 Budget Update and Fiscal Health Report**

Recommended Action:

A) Receive and File the FY 2021/22 Annual Comprehensive Financial Report and other auditor-issued reports; [and](#)

- B) Receive and file the FY 2022/23 Budget Update and Fiscal Health Report (Attachment 8); and,
- B) Approve mid-year budget adjustments to the FY 2022/23 Revised Budget in the funds and by the amounts contained in Attachment 3; and,
- C) Authorize additional Professional Services authority in the Fiscal Year 2022/23 Revised Budget in the departments and by the amounts contained in Attachment 4; and,
- D) Approve and authorize the Mayor and City Clerk to execute "Amendment No. 1 to Agreement between the City of Huntington Beach and CSG Consultants, Inc. for On-Call Building Division Plan Review Services" (Attachment 5); and,
- E) Approve and authorize the Mayor and City Clerk to execute "Amendment No. 1 to Agreement between the City of Huntington Beach and True North Compliance Services, Inc. for On-Call Building Division Plan Review Services" (Attachment 6); and,
- F) Accept, approve and authorize the City Manager to execute the grant agreement with the State of California Energy Commission in the amount of \$80,000 (Attachment 7).

ORDINANCES FOR INTRODUCTION

21. [23-162](#) **Approve for Introduction Ordinance No. 4280 Amending Chapter 2.109 of the Huntington Beach Municipal Code Regarding the Finance Commission**

Recommended Action:

Approve for introduction Ordinance No. 4280, "An Ordinance of the City of Huntington Beach Amending Chapter 2.109 to the Huntington Beach Municipal Code Regarding Finance Commission."

22. [23-163](#) **Approve the Introduction of Ordinance Nos. 4278, 4279, and 4281 Amending Chapters 2.111, 2.64 and 2.100 of the Huntington Beach Municipal Code Regarding the Citizen Infrastructure Advisory Board/Public Works Commission, the Community and Library Services Commission, and Operating Policy for Boards and Commissions respectively**

Recommended Action:

A) Approve for Introduction Ordinance No. 4278, "An Ordinance of the City of Huntington Beach Amending Chapter 2.111 to the Huntington Beach Municipal Code Regarding Citizen Infrastructure Advisory Board/Public Works Commission"; and/or,

B) Approve for Introduction Ordinance No. 4279, "An Ordinance of the City of Huntington Beach Amending Chapter 2.64.040 to the Huntington Beach Municipal Code Regarding Community and Library Services Commission"; and/or,

C) Approve for Introduction Ordinance No. 4281, "An Ordinance of the City of Huntington Beach Amending Chapter 2.100 to the Huntington Beach Municipal Code Regarding Operating Policy for Boards and Commissions."

23. [23-165](#) **Approve for Introduction Ordinance No. 4283 Adding Chapter 13.07 of the Huntington Beach Municipal Code Relating to Government Flags on City Property**

Recommended Action:

Approve for introduction Ordinance No. 4283, "An Ordinance of the City of Huntington Beach Amending Title 13 Public Property of the Huntington Beach Municipal Code Adding Chapter 13.07 Relating to Government Flags on City Property."

24. [23-176](#) **Approve for Introduction Ordinance No. 4284 Amending Municipal Code 13.52 Relating to Public Conduct within City-Owned Public Parking Structures**

Recommended Action:

Staff recommends City Council approve for introduction Ordinance No. 4284, "An Ordinance of the City of Huntington Beach Amending Huntington Beach Municipal Code Chapter 13.52 Relating to Public Buildings" regarding public conduct within City-owned public parking structures.

25. [23-177](#) **Approve for Introduction Ordinance No. 4273 Amending Municipal Code 13.48 Relating to the Use of Tents and Other Uses Within City Parks**

Recommended Action:

Staff recommends City Council approve the introduction of Ordinance 4273, "An Ordinance of the City Council of the City of Huntington Beach Amending Title 13 of the Huntington Beach Municipal Code Relating to Parking Lot and Camping Regulations in Public Parks, and Making a Finding of Exemption Under CEQA" relating to the use of tents and other uses within City parks.

COUNCILMEMBER ITEMS

26. [23-172](#) **Submitted by Councilmember Burns - SB 9 and SB 10 Impacts to Huntington Beach**

Recommended Action:

Direct the City Attorney to take any legal action necessary to challenge SB 9 and SB 10 and the laws that permit ADU's. Also, direct the City Manager to cease the processing of

all applications/permits brought to the City by developers under SB 9, SB 10, or State law related ADU projects, until the courts have adjudicated the matter(s).

27. [23-184](#) Submitted by Mayor Strickland and Mayor Pro Tem Van Der Mark - Request to prepare a Invocation Policy

Recommended Action:

Direct the City Manager to work with the City Attorney to return to the City Council with a Resolution for a City Council policy for the constituting of a list of religious associates or leaders, maintaining that list, evaluation of religious associates or leaders, and rotation system for religious leaders at City Council meetings to offer an invocation. The City Attorney should ensure that whatever policy is returned to Council for a vote is compatible with Constitutional principles of government involved/restricted speech and exercise of religion. In doing so, modifications or adjustments to this proposal are welcome from the City Attorney.

ADJOURNMENT

The next regularly scheduled meeting of the Huntington Beach City Council/Public Financing Authority is Tuesday, March 7, 2023, in the Civic Center Council Chambers, 2000 Main Street, Huntington Beach, California.

INTERNET ACCESS TO CITY COUNCIL/PUBLIC FINANCING AUTHORITY AGENDA AND STAFF REPORT MATERIAL IS AVAILABLE PRIOR TO CITY COUNCIL MEETINGS AT

<http://www.huntingtonbeachca.gov>

EXHIBIT B

ORDINANCE NO. 4285

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 202.04 OF THE HUNTINGTON BEACH ZONING AND
SUBDIVISION ORDINANCE PROHIBITING BUILDERS REMEDY APPLICATIONS
(ZONING TEXT AMENDMENT NO. 23-001)

WHEREAS, Zoning Text Amendment No. 23-001 will amend Chapter 202 of the Huntington Beach Zoning and Subdivision Ordinance, relating to Organization, Applicability, and Interpretation; and

The Huntington Beach Planning Commission and Huntington Beach City Council have held separate, duly noticed public hearings to consider Zoning Text Amendment No. 23-001; and

After due consideration of the findings and recommendations of the Planning Commission and all other evidence presented, the City Council finds that the aforesaid amendment is proper and consistent with the General Plan;

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 202.04 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

202.04 (o) **Builder's Remedy Ban.** The City expressly prohibits the processing or approval of any application for a housing development project or any project not in conformance with the zoning and General Plan land use designation, including all applicable City laws, zoning and land use regulations, and other environmental laws, such as CEQA, regardless of the so-called "Builder's Remedy" (under the Housing Accountability Act or any other State law), that portend to allow developers of affordable housing projects to bypass the zoning code and general plan of cities that are out of compliance with the Housing Element Law.

This express prohibition requires that all project applicants conform to the applicable zoning and General Plan land use designations regardless of the City's status and regard to Housing Element Law.

SECTION 3. This Ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2023.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney *WV*

ATTEST:

APPROVED AS TO FORM:

City Manager

Director of Community Development

LEGISLATIVE DRAFT
HBZC CHAPTER 202.04

Chapter 2.111

202.04 General Rules of Applicability of the Zoning and Subdivision Ordinance

A. **Applicability to Property.** The Zoning and Subdivision Ordinance shall apply to all land within the City of Huntington Beach. The Local Coastal Program Implementation Plan shall apply to all land within the City of Huntington Beach coastal zone.

B. **Applicability to Streets and Rights-of-Way.** Public streets, utility, and other rights-of-way shall be in the same zoning district as contiguous property. Where contiguous properties are classified in different zoning districts, the centerline of the street or right-of-way shall be the district boundary, unless otherwise depicted on the zoning map.

C. **Who Qualifies as an Applicant.** Only a qualified applicant (including an agent of the applicant with written authorization from the owner) may file an application for approval on a specific site. A qualified applicant is a person who has a freehold interest in the land which is the subject of the application. The Director shall require an applicant to submit proof of the interest. The Director shall require an agent to submit evidence of authority to act for the applicant. Any person or agency may file for a zoning text amendment.

D. **Compliance with Ordinances.** No land shall be used, and no structure shall be constructed, occupied, enlarged, altered, demolished or moved in any zoning district except in accord with the provisions of Titles 20 through 25. Further, no lot area shall be so reduced or diminished that the yards or other open space shall be smaller than prescribed by these titles nor shall the density be increased in any manner except in conformity with the provisions established herein.

E. **Public Nuisance.** Neither the provisions of Titles 20 through 25 nor the approval of any permit authorized by these titles shall authorize the maintenance of any public nuisance.

F. **Compliance with Public Notice Requirements.** Compliance with public notice requirements prescribed by Titles 20 through 25 shall be deemed sufficient notice to allow the City to proceed with a public hearing and take action on an application, regardless of actual receipt of mailed or delivered notice.

G. **Requests for Notice.** Where Titles 20 through 25 require that notice be given by first class mail to "any person who has filed a written request for such notice," the request shall be filed with the Director and shall be subject to the applicable fees set to cover mailing costs.

H. **Notice to Surrounding Property Owners.** Notice shall be mailed to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the property that is the subject of the hearing, as required by state law. Applicants may submit and the Director may use records of the County Assessor or Tax Collector which contain more recent information than the assessment roll.

I. **Conflict with Other Ordinances.** Where conflict occurs between the provisions of Titles 20 through 25 and any other City code, title, chapter, resolution, guideline, or regulation, the more restrictive provision shall control unless otherwise specified in these titles.

J. **Relation to Private Agreements.** It is not intended by applicable provisions of Titles 20 through 25 to interfere with or abrogate or annul any easements, covenants, or other existing agreements between parties or to repeal any ordinance or other section of the Huntington Beach Municipal Code except as set forth in subsection [202.04\(l\)](#), above.

K. **Annexations/Pre-Zoning.** Unincorporated territory adjacent to the City may be pre-zoned for the purpose of determining the zone district which will apply in the event of annexation to the City. The procedure for pre-zoning property shall be the same as that for zone changes within the City. Such zoning shall become effective at the time the annexation becomes effective. Any property which, after annexation or for any other reason, does not have a designation on the zoning map shall be deemed to be zoned RL, low-density residential. Inclusion of an annexed area within the coastal zone into the certified Local Coastal Program shall require approval of a Local Coastal Program amendment by the Coastal Commission.

L. **Application During Local Emergency.** The City Council may authorize deviations from any provision of this title during a local emergency. Such deviations may be authorized by resolution of the City Council.

M. **Issuance of Permits or Entitlements Prohibited.** No permit or entitlement shall be issued by any department of the City in any case where a permit or entitlement is required to be granted and for which an appeal period is provided by this zoning and subdivision ordinance until the expiration of such appeal period or the final determination of any appeal filed pursuant to this ordinance.

N. **Certificate of Occupancy and Final Building Inspection Withheld.** No certificate of occupancy shall be issued or final building inspection shall be made until terms and conditions attached to a permit or entitlement required by this zoning and subdivision ordinance are met.

O. **Builder's Remedy Ban.** The City expressly prohibits the processing or approval of any application for a housing development project or any project not in conformance with the zoning and General Plan land use designation, including all applicable City laws, zoning and land use regulations, and other environmental laws, such as CEQA,

of the so-called "Builder's Remedy" (under the Housing Accountability Act or any other State law), that portend to allow developers of affordable housing projects to bypass the zoning code and general plan of cities that are out of compliance with the Housing Element Law.

This express prohibition requires that all project applicants conform to the applicable zoning and General Plan land use designations regardless of the City's status and regard to Housing Element Law.

ATTACHMENT NO. 1

SUGGESTED FINDINGS OF APPROVAL

ZONING TEXT AMENDMENT NO. 23-001

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

Zoning Text Amendment (ZTA) No. 23-001 is exempt from California Environmental Quality Act (CEQA), pursuant to Section 15061(b), the general rule that CEQA only applies to projects which have the potential for a significant effect on the environment. While this amendment will clarify existing zoning regulations, it does not authorize any development that will result in direct physical changes to the environment.

SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 23-001:

1. Zoning Text Amendment No. 23-001 is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan as follows:

Land Use Element:

Goal LU-1 – New commercial, industrial, and residential development is coordinated to ensure that the land use pattern is consistent with the overall goals and needs of the community.

2. Zoning Text Amendment No. 23-001 is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed. The ZTA is designed to prevent incompatible land uses that will occur if a developer attempts to bypass the City zoning Code and develop certain residential projects in incompatible zones.
3. A community need is demonstrated for the change proposed because the ZTA would prevent the use of Builder's Remedy, where housing projects could be built near environmentally sensitive areas that could harm the environment or next to industrial sites where residents will be subject to diminished air, light and sound quality because of being next to large industrial complexes.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice. The ZTA affirms the City's use of zoning as the legal mechanism to control development on land within their jurisdiction, primarily by designating land for certain uses or categories of uses (zones). This practice of "Euclidean zoning," allows the City to define parcels based on distinct residential or industrial/commercial use. Euclidean zoning is a way to mitigate negative effects of industrial and urban development (light and air pollution) on residences by separating those uses and another tool or alternative to nuisance tort law.