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 12 *Department of Housing and Community*
 13 *Development*

14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 16 SOUTHERN DIVISION
 17

18 **CITY OF HUNTINGTON BEACH, a**
 19 **California Charter City, and**
 20 **Municipal Corporation, the**
 21 **HUNTINGTON BEACH CITY**
 22 **COUNCIL, MAYOR OF**
 23 **HUNTINGTON BEACH, TONY**
 24 **STRICKLAND, and MAYOR PRO**
 25 **TEM OF HUNTINGTON BEACH,**
 26 **GRACEY VAN DER MARK,**
 27
 28 Plaintiffs,

8:23-cv-00421-FWS-ADS

**STATE DEFENDANTS' NOTICE
 OF MOTION AND MOTION TO
 DISMISS COMPLAINT**

Date: July 27, 2023
 Time: 10:00 a.m.
 Courtroom: 10D
 Judge: The Honorable Fred W. Slaughter

Trial Date: None Set
 Action Filed: March 9, 2023

v.

27 **GAVIN NEWSOM, in his official**
 28 **capacity as Governor of the State of**

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**California, and individually;
GUSTAVO VELASQUEZ in his
official capacity as Director of the
State of California Department of
Housing and Community
Development, and individually;
STATE LEGISLATURE; STATE OF
CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT; SOUTHERN
CALIFORNIA ASSOCIATION OF
GOVERNMENTS; and DOES 1-50,
inclusive,**

Defendants.

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that on July 27, 2023 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 10D before the Honorable Fred Slaughter of the United States District Court for the Central District of California, located at 411 West 4th Street, Santa Ana, CA 92701, Defendants Governor Gavin Newsom, in his official capacity as Governor of the State of California, and individually, Gustavo Velasquez, in his official capacity as Director of the State of California Department of Housing and Community Development, and individually, and the State of California Department of Housing and Community Development will and hereby do move this Court to dismiss the First Amended Complaint and all claims therein, pursuant to rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

This motion to dismiss is made on the grounds that this Court lacks subject matter jurisdiction and that Plaintiffs fail to state a claim upon which relief can be granted. This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Request for Judicial Notice, the papers and pleadings on file, and upon such matters that may be submitted at the hearing.

This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on March 27, 2023 at 3:00 p.m. via teleconference, and pursuant to this Court’s April 11, 2023 Order Granting Joint Stipulation to Set Briefing Schedule on Motions Challenging First Amended Complaint.

1 Dated: May 1, 2023

Respectfully submitted,

2

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5

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

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3 Plaintiffs City of Huntington Beach, Huntington Beach City Council, Mayor
4 Tony Strickland, and Mayor Pro Tem Gracey Van Der Mark (collectively, the City
5 or Plaintiffs) want to shirk their responsibility to meet their fair share of the state’s
6 housing needs, and this case is only the latest chapter in the City’s longstanding
7 defiance of state housing laws. Recognizing that “California has a housing supply
8 and affordability crisis of historic proportions,” a matter of statewide concern, state
9 courts have consistently upheld California’s housing laws against local
10 challenges—including ones brought by Huntington Beach itself. *See California*
11 *Renters Legal Advoc. & Educ. Fund v. City of San Mateo*, 68 Cal.App.5th 820, 830
12 (2021); *see also* Request for Judicial Notice (RJN), Ex. 1, *City of Huntington Beach*
13 *v. Newsom, et al.* (Los Angeles County Superior Court, Case No. 30-2019-
14 01044945), Order Denying Petition for Writ of Mandate (Jan. 28, 2021) (finding
15 that California’s housing laws “do not violate the municipal affairs doctrine of the
16 California Constitution and may be enforced [against charter cities]”) (no appeal
17 taken).

18 Now, Plaintiffs try their hand in federal court, alleging baseless federal
19 constitutional claims in yet another attempt to challenge the state’s housing laws.
20 However, Ninth Circuit law makes perfectly clear that cities, as political
21 subdivisions, have no standing to sue the State in federal court for alleged
22 constitutional violations. Even if Plaintiffs could establish standing, this case is a
23 transparent attempt to interfere with an ongoing state-court lawsuit that the State
24 has brought against Huntington Beach over the city’s refusal to comply with state
25 housing laws, including its failure to adopt a compliant housing element—the very
26 subject of this case. Accordingly, this Court should abstain under the doctrine of
27 *Younger v. Harris*. Finally, even if this Court were to reach the merits, each and
28 every one of the numerous claims alleged in the First Amended Complaint (FAC)

1 fails as a matter of law. Even assuming the city could assert the First Amendment
2 as grounds for refusing to comply with state housing laws, and it cannot, the
3 challenged requirements do not restrict protected “speech.” Plaintiffs’ due process
4 claims are similarly meritless, if not frivolous. And all of Plaintiffs’ state-law
5 claims are squarely barred by the Eleventh Amendment. Because the FAC’s
6 numerous defects cannot be cured by amendment, it should be dismissed without
7 leave to amend.

8 **BACKGROUND**

9 **I. THE STATE’S HOUSING LAWS**

10 Two state housing laws are at issue here. The first is Article 10.6 of the
11 California Government Code, better known as the Housing Element Law. Cal. Gov.
12 Code § 65580, et seq. The second, which is technically part of the Housing Element
13 Law, is the Housing Accountability Act (HAA). § 65589.5.¹

14 Under these laws, local governments must include a housing element as part
15 of their general plan. § 65302(c). Housing elements, which must be updated every 5
16 to 8 years, set forth how local governments will control and foster the development
17 of housing to accommodate growing regional housing needs for residents across all
18 income levels (very low-, low-, moderate-, and above moderate-income). § 65588.
19 This is commonly referred to as the Regional Housing Needs Allocation (RHNA)
20 process.

21 The RHNA process plays a critical role in setting the stage for housing
22 production and is designed to bring local zoning and planning into alignment with
23 the state’s regional housing needs. § 65584 *et seq.* Briefly, in each housing element
24 cycle, the California Department of Housing and Community Development (HCD),
25 relying on data supplied by the Department of Finance concerning projected
26 household growth across all income levels, assigns a target number or goal for

27
28 ¹ Unless otherwise specified, all further statutory references are to the
California Government Code.

1 additional housing units to each region of the State. A final determination of
2 regional housing needs is made in consultation with the appropriate regional
3 council of governments. § 65584(b). Each regional council of government, such as
4 the Southern California Association of Governments (SCAG), of which the City is
5 a member, then allocates its assigned number of housing units to its member
6 jurisdictions. § 65584.05(a). The draft allocation is distributed to member
7 jurisdictions at least 18 months prior to the scheduled housing element revision
8 deadline. *Id.* Any member jurisdiction wishing to appeal its draft allocation must
9 then do so, to its regional council of government, within 45 days. § 65584.05(b).
10 Final allocations are adjusted based upon the results of the administrative appeals. §
11 65584.05(e).

12 In updating their housing elements, local governments must prepare a draft
13 housing element for review by HCD. § 65585(b). HCD reviews the draft and issues
14 findings on whether it substantially complies with the Housing Element Law.
15 § 65585(b)(3), (e). If it does not, then the local government may either conform the
16 proposed housing element to HCD’s comments *or* adopt it without changes.
17 § 65585(f) (emphasis added). If it does the latter, it must explain why it believes
18 that its draft complies with the law. *Id.* HCD will then determine whether an
19 enforcement action is necessary. § 65585(h), (i).

20 The HAA helps enforce these obligations and ensures that each city is doing
21 its part to facilitate the development of affordable housing across the state. One way
22 it does so is through the “Builder’s Remedy,” a self-effectuating provision of the
23 HAA which prohibits cities from relying on outdated planning and zoning rules as a
24 basis for disapproving new affordable housing projects. § 65589.5(d)(5).
25 Specifically, when a local government fails to maintain a substantially compliant
26 housing element that meets or exceeds its allotted share of regional housing needs
27 by the relevant deadline—here, October 15, 2021—affordable housing developers
28 may invoke the “Builder’s Remedy,” which sharply limits a city’s ability to deny

1 affordable housing projects. § 65589.5(d)(5). When the “Builder’s Remedy” is
2 invoked, a city may not deny a proposed affordable housing development solely on
3 the grounds that it is noncompliant with local zoning or general plan standards.

4 **II. THE CITY’S ACTIONS LED TO THIS POINT**

5 This is not the City’s first attempt to challenge state housing law. Instead, this
6 action is part of the City’s unsuccessful pattern of resistance to its obligations under
7 state law.

8 **A. Huntington Beach’s Previous Failed Attempts to Flout State 9 Housing Laws**

10 In 2019, the City filed two lawsuits in state court seeking to prevent the
11 enforcement of state housing law, including the Housing Element Law, against
12 Huntington Beach. *See* RJN, Ex. 1. These lawsuits challenged state laws that, *inter*
13 *alia*, reduced a city’s authority to block housing projects if it did not meet its
14 RHNA target and made charter cities subject to the full Housing Element Law for
15 the first time. Huntington Beach argued that these laws represented an
16 unconstitutional overreach into the City’s “home rule” authority over municipal
17 affairs. Cal. Const., art. XI, § 5, *see generally* *State Bldg. & Constr. Trades Council*
18 *of California v. City of Vista*, 54 Cal. 4th 547, 556 (Cal. 2012). In an order denying
19 both petitions, the Los Angeles Superior Court thoroughly considered and rejected
20 Huntington Beach’s arguments that these laws violated the municipal affairs
21 provision of the California Constitution. RJN, Ex. 1. Huntington Beach did not
22 appeal this decision.

23 Days after Huntington Beach filed its petitions for writs of mandate, HCD
24 sued Huntington Beach for its failure to bring its fifth-cycle (2013 through 2021)
25 housing element into substantial compliance with state law and for illegally
26 downzoning property. *See* RJN, Ex. 2, *California Department of Housing and*
27 *Community Development v. City of Huntington Beach et al.* (Orange County
28

1 Superior Court, Case No. 30-2019-01046493). After the City unsuccessfully
2 demurred, it adopted a compliant fifth-cycle housing element. *Id.*

3 **B. The City's Latest Efforts to Skirt Its Obligations, and HCD's**
4 **Pending State-Court Lawsuit to Once Again Bring the City Into**
5 **Compliance**

6 Despite these previous failed attempts to flout state housing requirements, the
7 City has continued its pattern of defiance. On February 21, 2023, the City adopted a
8 policy banning new housing accessory dwelling and duplex units on its residents'
9 property, in clear violation of state laws requiring ministerial approval of such
10 projects. *See* RJN, Ex. 3. The City has also failed to adopt a compliant sixth-cycle
11 housing element.²

12 In the face of these violations, HCD and the Attorney General of California
13 brought an enforcement action against the City on March 8, 2023, which is
14 ongoing. *Id.* The complaint initially focused on the City's unlawful ban on
15 accessory dwelling and duplex units, which the City quickly repealed. *Id.* at Ex. 4.
16 On April 10, 2023, HCD and the Attorney General added a claim addressing the
17 City's failure to adopt a compliant sixth-cycle housing element; a motion to amend
18 the complaint is pending. *See id.* Ex. 4.

19
20
21 ² HCD issued its final determination of the sixth-cycle allocation of
22 1,341,827 new housing units to SCAG on October 15, 2019. *See* RJN, Ex. 5. SCAG
23 issued its draft RHNA allocations on or about September 11, 2020. *Id.* Huntington
24 Beach appealed its RHNA allocation and argued *inter alia* that as a charter city it
25 was exempt from RHNA law. *Id.* SCAG considered the City's appeal in a January
26 2021 hearing and ultimately denied it. *Id.* On July 1, 2021, SCAG issued its final
27 distribution of RHNA allocations, with 13,368 units assigned to Huntington Beach.
28 RJN, Ex. 6.

The City was required to adopt a compliant sixth-cycle housing element
accounting for its RHNA target by October 15, 2021. *See* RJN, Ex. 7. It submitted a
draft to HCD for review on August 1, 2022. *Id.* HCD informed the City that the
draft element substantially complied with the Housing Element Law, but that the
City Council would need to formally adopt it, and have it found in compliance, by
October 15, 2022. *Id.* Otherwise, by law HCD could not find it in compliance until
the City completed certain actions to implement the draft housing element. *Id.* The
City has not adopted a compliant housing element as of the date of this filing.

1 **C. The Instant Litigation**

2 In its FAC, the City raises eleven separate causes of action, alleging that
3 Governor Gavin Newsom, HCD Director Gustavo Velasquez, and HCD itself
4 (collectively, the “State Defendants”) have violated the United States Constitution’s
5 First Amendment, the Fourteenth Amendment’s guarantee of procedural due
6 process, the Fourteenth Amendment’s guarantee of substantive due process, the
7 Commerce Clause, the California Constitution’s provisions regarding charter city
8 authority, the state’s own housing laws, the California Constitution’s provisions
9 regarding separation of powers, the California Constitution’s prohibition on bills of
10 attainder, the California Environmental Quality Act, and the California
11 Constitution’s prohibition on special statutes. The City also alleges the State
12 Defendants have somehow committed fraud. *See* FAC, *passim*.

13 The City filed a TRO application on March 14. *See* ECF No. 10. The TRO
14 application cited the March 21 City Council meeting as cause for this Court’s
15 emergency intervention to protect the City from having to adopt its own proposed
16 housing element and to avoid any consequences from the (already in effect)
17 Builder’s Remedy. *See* § 65589.5(d)(5). All defendants then in the case opposed the
18 application. ECF No. 29, 31, 33. On March 21, the Court denied the application,
19 holding, *inter alia*, that the City had not sufficiently shown it was entitled to *ex*
20 *parte* relief, that it had not shown it was likely to succeed on the merits, and that it
21 had not demonstrated a likelihood of irreparable harm. *See* ECF No. 35.

22 On March 27, the City filed its FAC, which is the operative complaint in this
23 case. ECF No. 38. The FAC differs only slightly from the initial complaint,
24 primarily adding allegations aimed at bolstering the City’s First Amendment speech
25 claims. FAC ¶¶ 123-126. As explained below, the FAC is still manifestly deficient
26 and should be dismissed with prejudice.

27
28

STANDARD OF REVIEW

I. FEDERAL RULE OF CIVIL PROCEDURE 12(B)(1)

Federal Rule of Civil Procedure Rule 12(b)(1) allows a party to raise the defense that the court lacks jurisdiction over the subject matter of a claim. *Thornhill Publ'g Co. v. Gen. Tel. & Elecs.*, 594 F.2d 730, 733 (9th Cir. 1979). A Rule 12(b)(1) motion attacks the allegations of the complaint. In such cases, and similar to the standards applicable to Rule 12(b)(6) motions, the district court must accept the allegations of the complaint as true. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1121-22 (9th Cir. 2010). However, where a Rule 12(b)(1) motion is brought, the “party asserting federal subject matter jurisdiction bears the burden of proving its existence.” *Id.* at 1122.

II. FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). To survive a motion to dismiss, a complaint must contain sufficient facts to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008) (internal quotation omitted). The court accepts as true all material allegations in the complaint and construes them in the light most favorable to the plaintiff. *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

LEGAL ARGUMENT

I. THIS CASE IS NOT JUSTICIABLE

A. Plaintiffs Lack Standing to Bring Their Claims

The Supreme Court has expressly held that municipal governments *do not have* federal constitutional rights vis-à-vis state governments. This is fatal to Plaintiffs’ federal constitutional claims.

1 “A municipal corporation, created by a state for the better ordering of
2 government, has no privileges or immunities under the Federal Constitution which
3 it may invoke in opposition to the will of its creator.” *Williams v. Mayor & City*
4 *Council of Baltimore*, 289 U.S. 36, 40 (1933). Rather, it is longstanding law that
5 states may control the conduct of their own subdivisions. Over a century ago, the
6 Supreme Court held that “[m]unicipal corporations are political subdivisions of the
7 state, created as convenient agencies for exercising such of the governmental
8 powers of the state as may be [e]ntrusted to them.” *Hunter v. City of Pittsburgh*,
9 207 U.S. 161, 178 (1907). Thus, the United States Constitution does not protect
10 municipal corporations vis-à-vis the state: “[T]he state is supreme, and its
11 legislative body, conforming its action to the state Constitution, may do as it will,
12 unrestrained by any provision of the Constitution of the United States.” *Id.* at 179.

13 Put simply, subject to the restraints established by its own state constitution,
14 California is entitled to govern the conduct of the city governments it created. Thus,
15 the City of Huntington Beach has no standing in federal court to challenge state
16 laws that govern its operations. “[P]olitical subdivisions of a state may not
17 challenge the validity of a state statute in a federal court on federal constitutional
18 grounds” because “they have no rights against the state of which they are a
19 creature.” *Palomar Pomerado Health Sys. v. Belshe*, 180 F.3d 1104, 1107 (9th Cir.
20 1999); *see also City of San Juan Capistrano v. California Pub. Utilities Comm’n*,
21 937 F.3d 1278, 1280 (9th Cir. 2019) (“[W]e have consistently held that political
22 subdivisions lack standing to challenge state law on constitutional grounds in
23 federal court.”); *City of S. Lake Tahoe v. California Tahoe Reg’l Plan. Agency*, 625
24 F.2d 231, 233–34 (9th Cir. 1980) (rejecting city’s federal constitutional challenge to
25 state regulations for lack of standing). Huntington Beach’s status as a charter city is
26 irrelevant to this analysis. *Burbank-Glendale-Pasadena Airport Auth. v. City of*
27 *Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (finding charter city did not have
28

1 standing because “charter cities in California generally are defined as political
2 subdivisions along with other governmental entities”).

3 With respect to the City Council and the individual city executives, the
4 Complaint does not assert any constitutional interest separate and distinct from the
5 City’s interests. Plaintiffs’ First Amendment claim, for example, alleges that state
6 housing laws unconstitutionally compel councilmembers to engage in “speech”
7 about housing needs. But state housing laws impose obligations on *cities*, not on
8 city councilmembers: any interest of Plaintiff councilmembers is entirely derivative
9 of the City’s interests. *See City of S. Lake Tahoe*, 625 F.2d at 237. Moreover, any
10 “personal dilemma” that a councilmember may harbor in complying with state law
11 cannot confer standing because the councilmember lacks any “concrete personal
12 injury” that differs from the consequences to the City. *Id.* In short, neither the
13 Council nor its members have standing to raise constitutional challenges to state
14 laws in federal court. *Id.*

15 Because the City lacks standing, all of Plaintiffs’ federal claims necessarily
16 fail.

17 **B. This Court Should Abstain From Hearing This Case Under The**
18 ***Younger v. Harris* Doctrine**

19 Even if Huntington Beach had standing, this Court should dismiss Plaintiffs’
20 claims under the *Younger* doctrine of abstention due to the vital state interests at
21 stake.

22 *Younger* abstention avoids unnecessary friction in state-federal relations when
23 parties on one side of a dispute file suit in state court and opposing parties file
24 factually related proceedings in federal court. *See Younger v. Harris*, 401 U.S. 37
25 (1971); *United States v. Morros*, 268 F.3d 695, 707 (9th Cir. 2001). Its purpose “is
26 to avoid unnecessary conflict between state and federal governments.” *Id.* *Younger*
27 abstention is appropriate where state court proceedings (1) are ongoing; (2)
28 implicate important state interests; and (3) provide adequate opportunity to raise the

1 federal claims as defenses. *Middlesex County Ethics Committee v. Garden State*
2 *Bar Ass'n*, 457 U.S. 423, 431 (1982). The Ninth Circuit also considers whether the
3 requested relief will “enjoin—or have the practical effect of enjoining—ongoing
4 state proceedings.” *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d
5 754, 758 (9th Cir. 2014). All of these criteria are satisfied in this case.

6 With respect to parallel proceedings, *Younger* abstention is properly invoked if
7 the state proceedings were initiated “before any proceedings of substance on the
8 merits have taken place in the federal court.” *Hawaii Housing Auth. v. Midkiff*, 467
9 U.S. 229, 238 (1984). Here, the State and HCD filed suit in Orange County
10 Superior Court against Huntington Beach and its officials on March 8, 2023,
11 seeking a writ of mandate due to their failure to comply with state housing laws. A
12 day later, on March 9, 2023, Huntington Beach filed the instant action in this Court.
13 Huntington Beach’s decision to run to federal court was clearly a response to the
14 State’s earlier-in-time suit filed in state court, which remains pending.

15 With respect to important state interests, California’s pressing commitment to
16 ensuring cities are in compliance with state housing laws and not skirting their
17 obligations to build additional, badly-needed housing fully justifies abstention. A
18 wide variety of state interests qualify as “important” for purposes of *Younger*
19 abstention. See *Ohio Civil Rights Comm’n v. Dayton Christian Schools, Inc.*, 477
20 U.S. 619, 625-629 (1986). Such vital interests include, as here, property law
21 concerns such as land use and zoning questions. See *Harper v. Public Service*
22 *Comm’n of West Va.*, 396 F.3d 348, 352-353 (4th Cir. 2005) (collecting cases). The
23 state court action clearly implicates these critical interests.

24 The parallel state proceedings in Orange County Superior Court also provide
25 Huntington Beach a full opportunity to litigate any federal claims it may be entitled
26 to bring. State court proceedings are presumed adequate to raise the federal claim
27 “in the absence of unambiguous authority to the contrary.” *Pennzoil Co. v. Texaco,*
28 *Inc.*, 481 U.S. 1, 15 (1987); *Communications Telesystems Int’l v. California Pub.*

1 *Utility Comm’n*, 196 F.3d 1011, 1020 (9th Cir. 1999) (state judicial review deemed
2 adequate despite court’s practice of summarily denying petitions for review of
3 CPUC decisions). Both lawsuits are factually intertwined and relate to Huntington
4 Beach’s refusal to comply with valid California law, including the Housing
5 Element Law and the RHNA allocation process. Plaintiffs have every right to raise
6 their purported federal claims as defenses in the pending state court action.

7 Finally, it is indisputable that the City’s requested relief would have the
8 practical effect of enjoining ongoing state proceedings. Huntington Beach seeks
9 relief that would, *inter alia*, enjoin the State Defendants from enforcing RHNA
10 laws and declare the housing laws the State Defendants seek to enforce—including
11 the *entirety* of the California Planning and Zoning Laws set forth at California
12 Government Code § 65000 through 66300—to be unconstitutional under both the
13 California and United States Constitutions. *See* FAC, Prayer for Relief. It could not
14 be more obvious that the City’s objective is to halt the state’s pending lawsuit to
15 enforce the state’s housing laws against the City.

16 This Court should not unnecessarily entangle itself in ongoing state court
17 proceedings and abstain from hearing this case under the *Younger* doctrine.

18 **C. The Eleventh Amendment Bars All of Plaintiffs’ State-Law**
19 **Claims, as Well as All Claims, State and Federal, Against**
20 **Governor Gavin Newsom and the California Department of**
21 **Housing and Community Development**

21 Assuming Plaintiffs have standing (which they do not) and should this Court
22 decline to abstain under the *Younger* doctrine, the Eleventh Amendment would still
23 bar all of Plaintiffs’ state-law claims, as well as all claims, state and federal, against
24 Governor Newsom and HCD.

25 The Eleventh Amendment prohibits federal lawsuits against a state or a state
26 agency unless the state has consented to the suit or Congress has abrogated the
27 state’s immunity. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-100
28 (1984). “[T]he principle of sovereign immunity is a constitutional limitation on the

1 federal judicial power established in Art. III.” *Id.* at 98. Plaintiffs have not alleged
2 that California has consented to this suit, or that Congress has abrogated the state’s
3 Eleventh Amendment immunity. Nor could they in good faith. *See id.* (consent
4 must be “unequivocally expressed”). A suit against a state official is likewise barred
5 under the Eleventh Amendment when the state itself is the “real, substantial party in
6 interest.” *Pennhurst*, 465 U.S. at 101. The “general rule is that relief sought
7 nominally against an officer is in fact against the sovereign if the decree would
8 operate against the latter.” *Id.*

9 A narrow exception under *Ex Parte Young*, 209 U.S. 123 (1908), permits
10 citizens to sue state officers in their official capacities for prospective declaratory or
11 injunctive relief regarding the officers’ alleged violations of *federal law*. *Coal. to*
12 *Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1133-34 (9th Cir. 2012)
13 (emphasis added). Suits attempting to enforce *state law* against a state or its
14 officials, however, do not fall within the *Ex Parte Young* exception. *Pennhurst*, 465
15 U.S. at 121. Thus, all of Plaintiffs’ state-law claims (Claims for Relief 5 through
16 11) are squarely barred. *Id.*

17 The Eleventh Amendment also bars all claims, state *and* federal, against
18 Governor Gavin Newsom and HCD. To be amenable to suit, a state official “must
19 have some connection with the enforcement of the act [being challenged].” *Coal. to*
20 *Defend Affirmative Action*, 674 F.3d at 1134 (quoting *Ex Parte Young*). Such
21 connection “must be fairly direct; a generalized duty to enforce state law or general
22 supervisory power over the persons responsible for enforcing the challenged
23 provision will not subject an official to suit.” *Id.*

24 Governor Newsom is not alleged to have any direct involvement in enforcing
25 the state housing laws at issue here, and his general duty to see that the laws of the
26 state are “faithfully executed” (Cal. Const., art. V, § 1) is not enough, without more,
27 to subject him to suit under *Ex Parte Young*. Thus, the Eleventh Amendment bars
28 any claims against him. *See Ass'n des Eleveurs de Canards et d'Oies du Quebec v.*

1 *Harris*, 729 F.3d 937, 943 (9th Cir. 2013). Further, as an agency of state
2 government, HCD is also entitled to Eleventh Amendment immunity. *City of San*
3 *Juan Capistrano*, 937 F.3d at 1281 (“The Eleventh Amendment bars claims against
4 a state—including its agencies—in federal court.”).

5 **II. PLAINTIFFS FAIL TO STATE ANY CLAIMS FOR RELIEF**

6 As set forth below, even if Plaintiffs were properly before this Court, their
7 claims would still fail on the merits.

8 **A. The City Cannot Hide Behind the First Amendment as an** 9 **Excuse for Violating State Housing Laws**

10 Plaintiffs First Amendment claim fails for the same reasons they lack
11 standing. The City is a political subdivision of the state, subject to the state’s
12 control and direction, not just with respect to housing requirements, but myriad
13 others. Thus, they cannot use the First Amendment as an excuse to violate state
14 housing and zoning laws. A municipality is a creature of the state and as such is
15 bound to comply with state law, subject only to limits imposed by the *state*
16 constitution. *See* Section 1.A. *supra*. If cities could invoke the First Amendment to
17 avoid their obligations under state housing laws, they could do the same for
18 virtually any law, merely by contending the law forces them to take actions that
19 they “disagree” with. California government and the constitutional order, which
20 makes cities political subdivisions subject to the control and direction of the state,
21 would collapse.

22 But even viewed through the lens of “free speech,” the laws at issue here do
23 not compel or restrict speech in any way, and the claim therefore fails as a matter of
24 law. As the parties invoking the First Amendment, Plaintiffs have the initial burden
25 of showing that it even applies. *See, e.g., Clark v. Cmty. for Creative Non-Violence*,
26 468 U.S. 288, 293 n.5 (1984). Here, the state laws at issue merely require the City
27 to adopt and cyclically update a housing element as part of its general plan.

28 §§ 65302(c), 65580, *et seq.* Failure to do so has consequences, but those

1 consequences do not punish cities for their *views* or “compel speech”; they impose
2 consequences on cities for maintaining *policies* that violate state law. *See, e.g.*,
3 § 65589.5(d)(5). If the City wants to control housing growth, it must do so in a
4 manner consistent with state law, which requires that it meet its fair share of
5 regional housing needs pursuant to clear and objective rules adopted in advance of a
6 proposed new development. *See California Renters*, 68 Cal.App.5th at 850. The
7 housing laws of which the City complains do not implicate, let alone violate, the
8 First Amendment merely by placing conditions on how local governments regulate
9 the production of housing.

10 Plaintiffs contend that the State is violating their First Amendment rights by
11 requiring the City to adopt legislation that includes certain declarations with respect
12 to the “need for housing,” and take certain votes, at the time it adopts a housing
13 element. FAC ¶ 11. But legislators have no protectable First Amendment interest in
14 their votes on legislation. *Nevada Comm’n on Ethics v. Carrigan*, 564 U.S. 117
15 (2011). In *Carrigan*, the Supreme Court upheld a Nevada statute requiring a
16 legislator’s recusal in the event of a conflict of interest. *Id.* at 125. According to the
17 Supreme Court, a legislative vote is an “apportioned share of the legislature’s
18 power” to adopt or reject legislation. *Id.* at 125-26. “The legislative power thus
19 committed is not personal to the legislator but belongs to the people; the legislator
20 has no personal right to it.” *Id.* at 126. A “legislator has no right to use official
21 powers for expressive purposes.” *Id.* at 127. “[T]he act of voting symbolizes
22 nothing[,]” it is a “nonsymbolic act.” *Id.* at 126, 127. Thus, requiring local
23 legislative bodies to vote on and adopt certain housing policies does not compel or
24 proscribe speech. Nor does requiring the City to make certain findings under
25 CEQA. *See* FAC ¶¶ 130-131. Indeed, if and when the City finally adopts a
26 compliant housing element, it may simply state that it was required to do so by state
27 law; nothing requires the City or city council members to “agree” with state law.
28

1 Indeed, Plaintiffs may publicly state their own views about state and local
2 housing policies (including in the housing element itself), and nothing in the
3 Housing Element Law prevents this. What they cannot do is openly defy state laws
4 requiring the City to adopt land use policies consistent with the State’s housing
5 needs and imposed on them by the Legislature.

6 **B. The City’s Due Process Claims Are Without Merit**

7 **1. The City Has No Procedural Due Process Right to**
8 **Challenge the State’s Housing Laws or RHNA Allocation**

9 Plaintiffs argue their procedural due process rights have been violated because
10 they were excluded from providing input into the various legislative and
11 administrative processes that resulted in its RHNA allocation, and because there is
12 no judicial review of HCD’s RHNA determination.

13 Even if the City possessed “due process” rights as against the State—and it
14 does not—the City’s procedural due process claims would fail on the merits. “A
15 procedural due process claim has two distinct elements: (1) a deprivation of a
16 constitutionally protected liberty or property interest, and (2) a denial of adequate
17 procedural protections.” *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*,
18 149 F.3d 971, 982 (9th Cir. 1998). “The base requirement of the Due Process
19 Clause is that a person deprived of property be given an opportunity to be heard ‘at
20 a meaningful time and in a meaningful manner.’” *Id.* at 984. “[D]ue process does
21 not always require an adversarial hearing . . . a full evidentiary hearing . . . or a
22 formal hearing[.]” *Buckingham v. Sec’y of U.S. Dep’t of Agr.*, 603 F.3d 1073,
23 1082–83 (9th Cir. 2010) (internal quotations and citations omitted). Rather, “[d]ue
24 process is flexible and calls for such procedural protections as the particular
25 situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (internal
26 quotation and citation omitted). An analysis of whether due process has been
27 afforded looks to three factors:

28 [(1)] the *private* interest that will be affected by the official action; [(2)]

1 the risk of an erroneous deprivation of such interest through the
2 procedures used, and the probable value, if any, of additional or
3 substitute procedural safeguards; and [(3)] the Government’s interest,
4 including the function involved and the fiscal and administrative burdens
5 that the additional or substitute procedural requirement would entail.

6 *City of Los Angeles v. David*, 538 U.S. 715, 716 (2003) (emphasis added).

7 Here, Plaintiffs argue that they do not have an opportunity to seek judicial
8 review of their RHNA allocations. FAC ¶¶ 136-147. But there is no “private”
9 interest at stake here, and constitutional due process does not always require
10 judicial intervention. Indeed, as outlined above, Plaintiffs are afforded sufficient
11 process to challenge their regional allocations under statute. *See* § 65584.05
12 (providing for an administrative appeal process for member cities and counties to
13 challenge their housing allocations to their respective council of governments). In
14 fact, Huntington Beach *already* pursued an appeal to SCAG during the RHNA
15 allocation process, which was denied. *See* footnote 2 *supra*; RJN, Ex. 5. The City
16 has *already been afforded* adequate procedural due process, and its argument to the
17 contrary is both contradicted by judicially noticeable facts and frivolous.

18 **2. Plaintiffs’ Substantive Due Process Claim Fails**

19 **a. The City Has No Fundamental Right to Control Land** 20 **Use**

21 The City’s substantive due process claim closely tracks its procedural due
22 process claim and also fails as a matter of law. The Due Process Clause of the
23 Fourteenth Amendment includes a substantive component that protects individual
24 liberties from state interference. *Mullins v. Oregon*, 57 F.3d 789, 793 (9th Cir.
25 1995). But the range of liberty interests that are protected is narrow, and has largely
26 been confined to deeply personal matters such as marriage, procreation,
27 contraception, family relationships, child rearing, education, and a person’s bodily
28 integrity. *Franceschi v. Yee*, 887 F.3d 927, 937 (9th Cir. 2018). Plaintiffs do not

1 and could not allege violation of any such rights. A municipality’s control over
2 local zoning is simply not a liberty interest protected by substantive due process.

3 At base, Plaintiffs’ substantive due process claim (like all of its claims in this
4 case) is rooted in their belief that, as a charter city, Huntington Beach enjoys
5 unfettered “home rule” authority to control local zoning and permitting decisions.
6 Plaintiffs are flatly incorrect. As California courts have *repeatedly* explained, the
7 Legislature can permissibly limit a charter city’s authority and preempt local law
8 when it deems a subject area to be of “statewide concern,” as the Legislature has
9 often done for housing, and as California courts have consistently upheld.³ *See, e.g.*
10 *California Renters*, 68 Cal.App.5th at 846-851 (upholding the constitutionality of
11 the HAA against a “home rule” challenge); *Ruegg & Ellsworth v. City of Berkeley*,
12 63 Cal.App.5th 277, 315 (2021) (upholding the constitutionality of section 65913.4,
13 a streamline permit approval law for multifamily developments, against a “home
14 rule” challenge); and *Buena Vista Gardens Apartments Assn. v. City of San Diego*
15 *Planning Dept.*, 175 Cal.App.3d 289, 306-307 (1985) (upholding the
16 constitutionality of the Housing Element Law against a “home rule” challenge.)
17 Plaintiffs do not have a “right” to control local zoning under the California
18 Constitution, much less a *fundamental* right to control local zoning that is protected
19 by the United States Constitution. Simply put, Plaintiffs have no likelihood of
20 success on their substantive due process claim.

21 **b. The State’s Housing Laws Easily Pass Rational Basis**
22 **Review**

23 Even if Plaintiffs could raise a valid constitutional claim (and they do not),
24 they do not allege any circumstances triggering a level of scrutiny beyond rational
25 basis review, which the State’s housing laws would easily meet. *Romero-Ochoa v.*
26 *Holder*, 712 F.3d 1328, 1331 (9th Cir. 2013) (statute did “not implicate a

27 ³ In fact, one California court has already decided the *exact issue* of the
28 Housing Element Law’s constitutionality in a “home rule” challenge brought by
Huntington Beach. *See* RJN, Ex. 1.

1 fundamental right or target a suspect class, so it is subject to rational basis review”).
2 Rational basis review “does not provide ‘a license for courts to judge the wisdom,
3 fairness, or logic of legislative choices.’” *Id.* (quoting *FCC v. Beach Commc’ns,*
4 *Inc.*, 508 U.S. 307, 313 (1993)). The issue is not whether the legislature has chosen
5 the best means for achieving its purpose, but only whether there are plausible
6 reasons for the legislature’s action. *Id.* And in this case, the Legislature has
7 repeatedly explained its rationale for passing the various housing laws, applying
8 them to charter cities, and requiring cities to adequately zone for new housing via
9 the RHNA process. *See, e.g.* §§ 65580 (Legislature’s findings with respect to
10 Housing Element Law); 65589.5(a) (Legislature’s findings with respect to HAA).
11 The state’s housing laws easily pass muster under rational basis review.

12 **C. The City’s Dormant Commerce Clause Claim is Without Merit**

13 The FAC does not state a viable dormant Commerce Clause claim. Dormant
14 Commerce Clause jurisprudence is primarily “driven by concern about economic
15 protectionism—that is, regulatory measures designed to benefit in-state economic
16 interests by burdening out-of-state competitors.” *Dep’t of Revenue v. Davis*, 553
17 U.S. 328, 337-338 (2008). “The principal objects of dormant Commerce Clause
18 scrutiny are statutes that discriminate against interstate commerce.” *CTS Corp. v.*
19 *Dynamics Corp. of Am.*, 481 U.S. 69, 87 (1987). A state regulation does not
20 become vulnerable to invalidation under the dormant Commerce Clause merely
21 because it affects interstate commerce. *See S. Pac. Co. v. State of Ariz.*, 325 U.S.
22 761, 767, 65 S.Ct. 1515 (1945). And a critical requirement for proving
23 a violation of the dormant Commerce Clause is that there must be a *substantial*
24 *burden* on interstate commerce. *See Nat’l Ass’n of Optometrists & Opticians v.*
25 *Harris*, 682 F.3d 1144, 1148 (9th Cir. 2012).

26 The City claims that California’s housing laws are an attempt to offer
27 “cheaper, more abundant housing than other states,” and that the housing laws
28 “forc[e] Plaintiff(s), like other cities in California, to use and divert building

1 supplies and materials from other States” to build additional housing. FAC ¶¶ 165,
2 167. However, the city utterly fails to explain how California’s housing laws, which
3 require cities to rezone to *allow* the production of housing within California’s own
4 borders, directly regulate, discriminate against, or excessively burden interstate
5 commerce. Neither does the City explain how California’s laws requiring cities to
6 zone for additional housing favor in-state economic interests over out-of-state
7 interests. The housing laws have no requirement, for example, that California cities
8 require homebuilders in their jurisdiction to use exclusively California-
9 manufactured products. Any impact on interstate commerce is clearly indirect and
10 negligible.

11 Plaintiffs have not and cannot plausibly plead that California’s housing laws,
12 which regulate purely in-state municipal governance, violate the dormant
13 Commerce Clause. This claim should be dismissed.

14 **D. The Court Should Dismiss All State Law Claims**

15 In addition to its federal claims, the City contends that, *inter alia*, the State’s
16 housing laws violate the California Constitution, that the State’s housing laws
17 constitute an illegal bill of attainder, that the State is somehow forcing the City to
18 violate CEQA, and that the State defendants have somehow engaged in fraud. As
19 the City’s complaint suffers from fatal jurisdictional defects and has not pled any
20 viable federal claims, as discussed *supra*, this Court must dismiss the City’s state
21 law claims, even if they could survive the Eleventh Amendment (and they do not).

22 Where a district court dismisses all federal claims on the merits, it has
23 discretion under 28 U.S.C. § 1367(c)(3) to adjudicate the remaining claims.
24 *Herman Fam. Revocable Tr. v. Teddy Bear*, 254 F.3d 802, 806 (9th Cir. 2001).
25 However, if the court dismisses for lack of subject matter jurisdiction, it has *no*
26 discretion and must dismiss *all* claims. *Id.* As explained above, the City does not
27 have standing to pursue federal claims against the State Defendants in federal court.
28 Thus, this Court lacks subject matter jurisdiction over the City’s federal claims and

1 must dismiss the state law claims. *Scott v. Pasadena Unified School Dist.*, 306 F.3d
2 646, 664 (9th Cir. 2002). And even if the Court does not dismiss all federal claims,
3 it may and should refuse to exercise jurisdiction over state law claims that, as here,
4 would predominate over any remaining federal claim. 28 U.S.C. § 1367(c)(2).

5 This Court also has discretion to decline jurisdiction over Plaintiffs'
6 declaratory relief claims, and should do so here. Under the Federal Declaratory
7 Judgment Act, 28 U.S.C. § 2201(a), the exercise of jurisdiction in such cases is
8 committed to the “sound discretion of the federal district courts.” *Huth v. Hartford*
9 *Ins. Co. of the Midwest*, 298 F.3d 800, 802 (9th Cir. 2002) (citations
10 omitted). “Even if the district court has subject matter jurisdiction, it is not required
11 to exercise its authority to hear the case.” *Id.* In deciding whether to entertain a
12 declaratory relief action, courts consider how the action would affect the principles
13 of judicial economy, comity, and cooperative federalism that the Declaratory
14 Judgment Act was designed to advance. *Gov’t Employees Ins. Co. v. Dizol*, 133
15 F.3d 1220, 1224 (9th Cir. 1998) (en banc). Three primary factors guide the court’s
16 exercise of its discretion: a district court should (1) avoid duplicative litigation, (2)
17 discourage litigants from filing declaratory actions as a means of forum shopping,
18 and (3) avoid needless determination of state law issues. *Huth*, 298 F.3d at 803;
19 *Dizol*, 133 F.3d at 1225. “If there are parallel state proceedings involving the same
20 issues and parties pending at the time the federal declaratory action is filed, there is
21 a presumption that the entire suit should be heard in state court.” *Dizol*, 133 F.3d at
22 1225.

23 These factors strongly weigh against exercising federal jurisdiction in this
24 case. This case is a transparent attempt to find a friendlier forum for the City’s
25 baseless and repeatedly rejected “home rule” challenges to state housing laws.
26 Further, the City could just as well raise its arguments—however meritless—as
27 defenses in the enforcement action brought by the State Defendants and currently
28 pending in Orange County Superior Court. The City does not need federal

1 declaratory relief in advance of such an action, particularly given its specious bases
2 for asserting federal subject matter jurisdiction, and also because it could always
3 bring itself into compliance with the Housing Element Law by adopting and
4 implementing a compliant housing element. *See* § 65585(f), (i).

5 This case turns ultimately on questions of state, not federal, law, and because
6 any legitimate federal questions that may arise can be litigated in state court at the
7 appropriate time, this Court should decline to exercise jurisdiction over the entire
8 case.

9 **CONCLUSION**

10 For the reasons above, the Complaint and all claims therein should be
11 dismissed without leave to amend.

12 Dated: May 1, 2023

13 Respectfully submitted,

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24 *Attorneys for Defendants, Gavin Newsom, in his official capacity as Governor of the State of California, and individually; Gustavo Velasquez, in his official capacity as Director of the State of California Department of Housing and Community Development, and individually; and the California Department of Housing and Community Development*

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants Governor Gavin Newsom, Gustavo Velasquez, and State of California Department of Housing and Community Development, certifies that this brief contains 6,963 words, which:

 x complies with the word limit of L.R. 11-6.1.

 complies with the word limit set by court order dated .

Dated: May 1, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California

/s/ Thomas Kinzinger

THOMAS P. KINZINGER
Deputy Attorney General
Attorneys for Defendants, Gavin Newsom, in his official capacity as Governor of the State of California, and individually; Gustavo Velasquez, in his official capacity as Director of the State of California Department of Housing and Community Development, and individually; and the California Department of Housing and Community Development

CERTIFICATE OF SERVICE

Case Name: **City of Huntington Beach, et al.** No. **8:23-cv-00421**
v. Gavin Newsom, et al.

I hereby certify that on May 1, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **STATE DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 1, 2023, at Los Angeles, California.

D. Arana
Declarant



Signature

1 ROB BONTA
 Attorney General of California
 2 DANIEL A. OLIVAS
 Senior Assistant Attorney General
 3 DAVID PAI, Bar No. 227058
 Supervising Deputy Attorney General
 4 MATTHEW STRUHAR, Bar No. 293973
 THOMAS KINZINGER, Bar No. 323889
 5 Deputy Attorneys General
 1300 I Street, 15th Floor
 6 Sacramento, CA 95814
 Telephone: (916) 210-7246
 7 Fax: (916) 731-2121
 E-mail: Matthew.Struhar@doj.ca.gov
 8 Thomas.Kinzinger@doj.ca.gov

9 *Attorneys for Defendants Gavin Newsom, in his*
official capacity as Governor of the State of
 10 *California, and individually; Gustavo Velasquez, in*
his official capacity as Director of the State of
 11 *California Department of Housing and Community*
Development, and individually; and the California
 12 *Department of Housing and Community*
 13 *Development*

14
 15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 17 SOUTHERN DIVISION

18 **CITY OF HUNTINGTON BEACH, a**
 19 **California Charter City, and**
 20 **Municipal Corporation, the**
 21 **HUNTINGTON BEACH CITY**
 22 **COUNCIL, MAYOR OF**
 23 **HUNTINGTON BEACH, TONY**
 24 **STRICKLAND, and MAYOR PRO**
 25 **TEM OF HUNTINGTON BEACH,**
 26 **GRACEY VAN DER MARK,**
 27
 28 **v.**
GAVIN NEWSOM, in his official
capacity as Governor of the State of

8:23-cv-00421-FWS-ADS

**REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF STATE
 DEFENDANTS' MOTION TO
 DISMISS**

Fed. R. Evid. 201

Date: July 27, 2023
 Time: 10:00 a.m.
 Courtroom: 10D
 Judge: The Honorable Fred W. Slaughter

Trial Date: None Set
 Action Filed: 3/09/2023

1 **California, and individually;**
2 **GUSTAVO VELASQUEZ in his**
3 **official capacity as Director of the**
4 **State of California Department of**
5 **Housing and Community**
6 **Development, and individually;**
7 **STATE LEGISLATURE; STATE OF**
8 **CALIFORNIA DEPARTMENT OF**
9 **HOUSING AND COMMUNITY**
10 **DEVELOPMENT; SOUTHERN**
11 **CALIFORNIA ASSOCIATION OF**
12 **GOVERNMENTS; and DOES 1-50,**
13 **inclusive,**

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REQUEST FOR JUDICIAL NOTICE

Defendants Governor Gavin Newsom, Director Gustavo Velasquez, and the California Department of Housing and Community Development (HCD) respectfully request, pursuant to Rule 201 of the Federal Rules of Evidence, that the Court take judicial notice of the following facts:

1. The City of Huntington Beach (the “City”) previously sued the State, seeking to have certain housing laws, including the Housing Element Law, held unconstitutional as applied to charter cities. The City lost this case on the merits. *See* Judgment, *City of Huntington Beach v. Newsom, et al.* (Los Angeles County Superior Court, Case No. 30-2019-01044945), a true and correct copy of which is attached hereto as **Exhibit 1**.
2. HCD sued the City in 2019 for allegedly violating its housing element and downzoning property. This case was resolved after the City brought its housing element into compliance. *See* Petition for Writ of Mandate and Complaint for Declaratory Relief, *California Department of Housing and Community Development v. City of Huntington Beach, et al.* (Orange County Superior Court, Case No. 30-2019-01046493); and Stipulation and Order; a true and correct copy of both is attached hereto as **Exhibit 2**.
3. On March 8, 2023, HCD and the Attorney General of California sued the City for its ban on accessory dwelling and duplex units, which the City adopted on February 21, 2023. *See* Petition and Complaint, *People of California ex rel. Rob Bonta et al. v. City of Huntington Beach* (Orange County Superior Court, Case No. 30-2023-01312235), a true and correct copy of which is attached hereto as **Exhibit 3**.

- 1 4. On April 10, 2023, and after the City allegedly repealed its ban on
2 accessory dwelling and duplex units, HCD and the Attorney General of
3 California moved to amend their Petition and Complaint, adding a claim
4 addressing the City’s failure to adopt a complaint sixth-cycle housing
5 element. *See* Motion to Amend, *People of California ex rel. Rob Bonta et*
6 *al. v. City of Huntington Beach* (Orange County Superior Court, Case
7 No. 30-2023-01312235), a true and correct copy of which is attached
8 hereto as **Exhibit 4**.
- 9 5. HCD issued its final determination of the sixth-cycle allocation of
10 housing units to the Southern California Association of Governments
11 (SCAG) on or about October 15, 2019. SCAG issued its draft allocations
12 to member jurisdictions on or about September 11, 2020. The City
13 appealed its RHNA allocation and argued that, as a charter city, it was
14 exempt from RHNA law. SCAG considered the City’s appeal in January
15 2021 and ultimately denied it. *See* SCAG Regional Housing Needs
16 Assessment Appeals Board, Appeals Determination: City of Huntington
17 Beach, a true and correct copy of which is attached hereto as **Exhibit 5**.
- 18 6. SCAG issued its final RHNA allocations on July 1, 2021. It allocated
19 13,368 units to Huntington Beach. *See* SCAG 6th Cycle Final RHNA
20 Allocation Plan, a true and correct copy of which is attached hereto as
21 **Exhibit 6**.
- 22 7. The City had, according to HCD, an October 15, 2021, deadline to adopt
23 a housing element update that substantially complied with Article 10.6 of
24 the Government Code (the Housing Element Law). The City submitted a
25 draft housing element to HCD on August 1, 2022. HCD informed the
26 City that the draft housing element substantially complied with the
27 Housing Element Law, but that the City Council would need to formally
28 adopt it, and have it found in compliance, by October 15, 2022.

1 Otherwise, by law HCD could not find it in compliance until the City
2 completed certain actions to implement the draft housing element. *See*
3 September 30, 2022 Letter from HCD to Ursula Luna-Reynosa, Director
4 of the City’s Community Development Department, a true and correct
5 copy of which is attached hereto as **Exhibit 7**.

6 Facts subject to judicial notice include those that “can be accurately and
7 readily determined from sources whose accuracy cannot reasonably be questioned.”
8 Fed. R. Evid. 201(b)(2). The Court “must take judicial notice if a party requests it
9 and the court is supplied with the necessary information.” *Id.* at (c)(2). Courts
10 regularly take judicial notice of “undisputed matters of public record, including
11 documents on file in federal or state courts.” *Harris v. Cty. of Orange*, 682 F.3d
12 1126, 1131-32 (9th Cir. 2012) (internal citations omitted); *Lee v. City of Los*
13 *Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). **Exhibits 1 through 4** are all
14 documents filed in California state-court actions and available to the public.

15 Information made publicly available by government entities, including data, is
16 also subject to judicial notice. *See Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992,
17 998-99 (9th Cir. 2010); *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 676 fn.6 (9th
18 Cir. 2017). **Exhibits 5 and 6** are reports and data made publicly available on
19 SCAG’s website at: <https://scag.ca.gov/rhna>. **Exhibit 7** is publicly-available
20 correspondence issued by HCD to the City and available on HCD’s website at:
21 [https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-](https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-element/OraHuntingtonBeachDraftIn092222.pdf)
22 [element/OraHuntingtonBeachDraftIn092222.pdf](https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-element/OraHuntingtonBeachDraftIn092222.pdf).

23 In sum, the above items meet the requirements of Rule 201(b)(2) of the
24 Federal Rules of Evidence, and therefore, the Court must take judicial notice of
25 them pursuant to Rule 201(c)(2) of the Federal Rules of Evidence.

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1 Dated: May 1, 2023

Respectfully submitted,

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ROB BONTA
Attorney General of California

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DAVID PAI
Supervising Deputy Attorney General

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5

/s/ Thomas Kinzinger

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7

MATTHEW T. STRUHAR
THOMAS P. KINZINGER
Deputy Attorneys General
Attorneys for Defendants, Gavin Newsom, in his official capacity as Governor of the State of California, and individually; Gustavo Velasquez, in his official capacity as Director of the State of California Department of Housing and Community Development, and individually; and the California Department of Housing and Community Development

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EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Deputy Attorney General Jennifer E. Rosenberg, SBN 275496 Office of the Attorney General 300 S. Spring Street, Suite 1702 Los Angeles, CA 90013 TELEPHONE NO.: 213-269-6617 FAX NO. (Optional): E-MAIL ADDRESS (Optional): jennifer.rosenberg@doj.ca.gov ATTORNEY FOR (Name): State of California, Gov. Gavin Newsom, Atty. Gen. Xavier Becerra	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse	
PLAINTIFF/PETITIONER: City of Huntington Beach DEFENDANT/RESPONDENT: State of California, et al.	
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less)	CASE NUMBER: 30-2019-01044945-CU-WM-CJC

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): February 18, 2021
2. A copy of the judgment, decree, or order is attached to this notice.

Date: February 18, 2021

Jennifer E. Rosenberg
(TYPE OR PRINT NAME ATTORNEY PARTY WITHOUT ATTORNEY)

 /s/ Jennifer E. Rosenberg
(SIGNATURE)

PLAINTIFF/PETITIONER: City of Huntington Beach DEFENDANT/RESPONDENT: State of California, et al.	CASE NUMBER: 30-2019-01044945-CU-WM-CJC
---	--

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):

- a. deposited the sealed envelope with the United States Postal Service.
- b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on (*date*): 2/18/2021
- b. from (*city and state*): Los Angeles, California

4. The envelope was addressed and mailed as follows:

- | | |
|---|--|
| <ul style="list-style-type: none"> a. Name of person served:
Michael F. Rawson, The Public Interest Law Project
Street address: 449 15th Street, Suite 301
City: Oakland
State and zip code: CA, 94612 b. Name of person served:
Alexander B. Prieto, Western Center on Law and Poverty
Street address: 3701 Wilshire Blvd., Suite 208
City: Los Angeles
State and zip code: CA 90010 | <ul style="list-style-type: none"> c. Name of person served:
Michael E. Gates, Office of the Huntington Beach City Atty
Street address: 2000 Main Street, Fourth Floor
City: Huntington Beach
State and zip code: CA 92648 d. Name of person served:
Street address:
City:
State and zip code: |
|---|--|

Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 18, 2021

VERONICA SAWERS
(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

Electronically Received 02/17/2021 01:56 PM

1 XAVIER BECERRA
 Attorney General of California
 2 MARK R. BECKINGTON
 Supervising Deputy Attorney General
 3 SETH E. GOLDSTEIN
 Deputy Attorney General
 4 JENNIFER E. ROSENBERG
 Deputy Attorney General
 5 State Bar No. 275496
 300 South Spring Street, Suite 1702
 6 Los Angeles, CA 90013
 Telephone: (213) 269-6617
 7 Fax: (916) 731-2124
 E-mail: Jennifer.Rosenberg@doj.ca.gov
 8 *Attorneys for Respondents/Defendants Gavin
 Newsom, in his official capacity as Governor of
 9 California, and Xavier Becerra, Attorney General of
 California, in his official capacity*

*Exempt from filing fees
per Gov. Code, § 6103*

FILED
 Superior Court of California
 County of Los Angeles
02/18/2021
 Sherri R. Carter, Executive Officer / Clerk of Court
 By: J. De Luna Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 FOR THE COUNTY OF LOS ANGELES

15 **CITY OF HUNTINGTON BEACH**, a
 California Charter City,

Petitioner/Plaintiff,

v.

19 **THE STATE OF CALIFORNIA; GAVIN
 NEWSOM**, Governor of California, in his
 20 official capacity; **XAVIER BECERRA**,
 Attorney General of California, in his official
 21 capacity; and **DOES 1 through 20**,

Respondents/Defendants,

23 **CALIFORNIA COALITION FOR RURAL
 HOUSING; HOUSING CALIFORNIA; and
 24 THE KENNEDY COMMISSION**,

Intervenors/Defendants.

30-2019-01044945-CU-WM-CJC
 [Consolidated with Case No. 30-2019-
 01048692]

~~PROPOSED~~ JUDGMENT

Electronically Received 02/17/2021 01:56 PM

1 This consolidated action came on for trial on January 28, 2021 in Department 85 of the Los
2 Angeles County Superior Court, the Honorable Judge James C. Chalfant presiding. Jonathan M.
3 Eisenberg and Jennifer E. Rosenberg of the California Attorney General’s Office appeared on
4 behalf of Respondents Governor Gavin Newsom, Attorney General Xavier Becerra, and the State
5 of California. Michael E. Gates appeared on behalf of Petitioner City of Huntington Beach.
6 Michelle K. Kotval and Michael F. Rawson appeared on behalf of Intervenor The Kennedy
7 Commission. Alexander Prieto appeared on behalf of Intervenors Housing California and
8 California Coalition for Rural Housing.

9 In this action, Case No. 30-2019-01044945-CU-WM-CJC (*City of Huntington Beach v.*
10 *State of California*) and Case No. 30-2019-01048692-CU-WM-CJC (*City of Huntington Beach v.*
11 *State of California*) were transferred to Los Angeles County Superior Court from Orange County
12 Superior Court and consolidated for all purposes, including trial and judgment, under Lead Case
13 No. 30-2019-01044945-CU-WM-CJC in Department 85. Petitioner City of Huntington Beach
14 filed a Second Amended Consolidated Petition for Writ of Mandamus and Complaint for
15 Declaratory Relief in the consolidated action.

16 Prior to the trial, the Court issued a tentative ruling denying the petition (attached hereto as
17 Exhibit A), which the Court adopted as its final ruling after argument.

18 Accordingly, IT IS ORDERED, ADJUDGED, AND DECREED that:

19 (1) The consolidated petition for writ of mandate is denied for the reasons set forth in the
20 ruling attached hereto as Exhibit A.

21 (2) The claim for declaratory relief is granted for the reasons set forth in the ruling attached
22 hereto as Exhibit A. The Court finds and declares, based on the evidence and for the reasons set
23 forth in the Court’s ruling, incorporated herein by reference, that the Housing Bills (Senate Bill
24 No. 35 (2017-2018 Reg. Sess.), Senate Bill No. 166 (2017-2018 Reg. Sess.), Senate Bill No. 1333
25 (2017-2018 Reg. Sess.), and Assembly Bill 101 (2019-2020 Reg. Sess.)) and amendments to
26 California statutes effected thereby, challenged by Petitioner City of Huntington Beach, do not
27 violate the municipal affairs doctrine or Article XI, section 5 of the California Constitution and
28 may be enforced.

1 (3) As the State of California was erroneously named as a Respondent in this action, the
2 Court hereby dismisses the State of California from the action for the reasons set forth in the
3 ruling attached hereto as Exhibit A.

4 (4) Judgment is entered in favor of Respondents Governor Gavin Newsom and Attorney
5 General Xavier Becerra and Intervenors The Kennedy Commission, Housing California, and
6 California Coalition for Rural Housing.



James C. Chalfant

7
8 Dated: 02/18/2021

James C. Chalfant / Judge
The Honorable James C. Chalfant

9
10 Approved as to Form:

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12 DATED: February 17, 2021

MICHAEL E. GATES, City Attorney

13
14 By: *Michael E. Gates*
15 MICHAEL E. GATES, City Attorney
16 Attorneys for Plaintiff-Petitioner
CITY OF HUNTINGTON BEACH

17 DATED: February __, 2021

PUBLIC INTEREST LAW PROJECT

18
19 By: _____
20 MICHAEL F. RAWSON, Esq.
21 Attorneys for Intervenor
THE KENNEDY COMMISSION

22 DATED: February __, 2021

WESTERN CENTER ON LAW AND POVERTY
CALIFORNIA RURAL LEGAL ASSISTANCE
FOUNDATION

23
24
25 By: _____
26 ALEXANDER PRIETO, Esq.
27 Attorneys for Intervenors HOUSING CALIFORNIA and
CALIFORNIA COALITION FOR RURAL HOUSING

1 (3) As the State of California was erroneously named as a Respondent in this action, the
2 Court hereby dismisses the State of California from the action for the reasons set forth in the
3 ruling attached hereto as Exhibit A.

4 (4) Judgment is entered in favor of Respondents Governor Gavin Newsom and Attorney
5 General Xavier Becerra and Intervenors The Kennedy Commission, Housing California, and
6 California Coalition for Rural Housing.

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9 Dated: _____
The Honorable James C. Chalfant

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Approved as to Form:

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DATED: February __, 2021 MICHAEL E. GATES, City Attorney

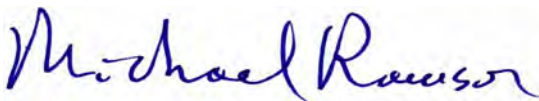
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By: _____
MICHAEL E. GATES, City Attorney
Attorneys for Plaintiff-Petitioner
CITY OF HUNTINGTON BEACH

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DATED: February 16, 2021 PUBLIC INTEREST LAW PROJECT

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By: 
MICHAEL F. RAWSON, Esq.
Attorneys for Intervenor
THE KENNEDY COMMISSION

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DATED: February __, 2021 WESTERN CENTER ON LAW AND POVERTY
CALIFORNIA RURAL LEGAL ASSISTANCE
FOUNDATION

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By: _____
ALEXANDER PRIETO, Esq.
Attorneys for Intervenors HOUSING CALIFORNIA and
CALIFORNIA COALITION FOR RURAL HOUSING

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1 (3) As the State of California was erroneously named as a Respondent in this action, the
2 Court hereby dismisses the State of California from the action for the reasons set forth in the
3 ruling attached hereto as Exhibit A.

4 (4) Judgment is entered in favor of Respondents Governor Gavin Newsom and Attorney
5 General Xavier Becerra and Intervenors The Kennedy Commission, Housing California, and
6 California Coalition for Rural Housing.

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9 Dated: _____
The Honorable James C. Chalfant

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11 Approved as to Form:

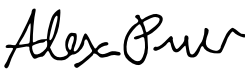
12 DATED: February __, 2021 MICHAEL E. GATES, City Attorney

13
14 By: _____
15 MICHAEL E. GATES, City Attorney
16 Attorneys for Plaintiff-Petitioner
CITY OF HUNTINGTON BEACH

17 DATED: February __, 2021 PUBLIC INTEREST LAW PROJECT

18
19 By: _____
20 MICHAEL F. RAWSON, Esq.
21 Attorneys for Intervenor
THE KENNEDY COMMISSION

22 DATED: February 16, 2021 WESTERN CENTER ON LAW AND POVERTY
23 CALIFORNIA RURAL LEGAL ASSISTANCE
24 FOUNDATION

25 By:  _____
26 ALEXANDER PRIETO, Esq.
27 Attorneys for Intervenors HOUSING CALIFORNIA and
28 CALIFORNIA COALITION FOR RURAL HOUSING

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DATED: February 16, 2021

OFFICE OF THE ATTORNEY GENERAL, CALIFORNIA
DEPARTMENT OF JUSTICE

By: _____

JENNIFER E. ROSENBERG, Esq.
Attorneys for Respondents GOVERNOR GAVIN
NEWSOM, ATTORNEY GENERAL XAVIER
BECERRA, and the STATE OF CALIFORNIA

EXHIBIT A

FILED
Superior Court of California
County of Los Angeles
JAN 28 2021
Sherri R. Caderis, Executive Officer/Clerk of Court
By: J. De Luna, Deputy

City of Huntington Beach v. The State of California, et al., 30-2019-01044945

~~Tentative~~ decision on petition for writ of mandate: denied

Petitioner City of Huntington Beach (“City”) seeks a writ of mandate prohibiting Respondents State of California, Governor Gavin Newsom (“Governor”), and Attorney General Xavier Becerra (“Attorney General”) (collectively, “State”)¹ from enforcing Senate Bill (“SB”) 35, SB 166 -- which was retroactively applied against charter cities by SB 1333 -- and Assembly Bill (“AB”) 101 (collectively “Housing Bills”) against City. State and Intervenors the Kennedy Commission’s (“Commission”), Housing California (“HC”), and California Coalition for Rural Housing (“CCRH”) oppose.

The court has read and considered the moving papers, oppositions, and reply, and renders the following tentative decision.

A. Statement of the Case

1. Petition 30-2019-01044945

City commenced this proceeding on January 17, 2019, in the Orange County Superior Court. The Second Amended Petition (“SAP”), filed on December 9, 2019, is the operative pleading and it alleges claims for traditional mandamus pursuant to CCP section 1085 and declaratory relief. The FAP alleges in pertinent part as follows.

SB 35 when into effect on January 1, 2018 and amended Government Code² sections 65400, 65582.1, and 65913.4. SB 35 was part of a “housing package” intended to address the state’s alleged housing shortage and high housing cost. The Legislature declared that SB 35 applies to all cities and counties, including charter cities. In part, SB 35 requires cities³ that have not made sufficient progress towards meeting their allocation of the regional housing need assessment (“RHNA”).⁴ SB 35 seeks to create a system where the State controls how, where, and when housing is built in every city in California. The effect of SB 35 is to unconstitutionally commandeer cities’ discretionary land use authority and permits State to “rezone” a city’s local

¹ Respondent State of California’s opposition points out that mandamus is properly brought against the officer who enforces the law, not the governmental entity. City of Redondo Beach v. Padilla, (2020) 46 Cal.App.5th 902, 908, n.4. State of California argues that it should be dismissed, leaving only the Governor and Attorney General as Respondents. State Opp. at 9, n.1. This is true and State of California is therefore dismissed. Despite this fact, the court will refer to the remaining individual Respondents collectively as “State”.

² All further statutory references are to the Government Code unless otherwise stated.

³ Although the laws at issue govern zoning by other local government agencies, the court shall refer to cities for convenience. See State Opp. at 12, n. 5.

⁴ RHNA is the statutory process to identify the total number of housing units (by affordability) allocated to each jurisdiction for planning purposes. As part of this process, the California Department of Housing and Community Development (“HCD”), through its regional sub-agencies, identifies the total housing need allocated to each city for an eight-year period.

01/29/2021

land use for political purposes.

AB 101 went into effect in August 2019 and amended multiple sections of the Government Code, Health and Safety Code, Public Resources Code, and Revenue and Taxation Code. The unconstitutional portions of this bill were introduced as part of a budget trailer bill that was touted to incentivize jurisdictions to build more housing and assist in providing housing to the homeless.

On October 9, 2019, the Governor signed SB 113 into law which amended sections 65585 and 65589.11. AB 101, as amended by SB 113, now requires that the Attorney General follow a specific statutory procedure if HCD finds that a city's housing element is not substantially compliant with state law. AB 101 makes a capricious finding that the new law is a matter of statewide concern and therefore applicable to charter cities. AB 101 requires HCD to notify a city or county and authorizes HCD to notify the office of the Attorney General, that the city or county is in violation of state law if the local government has taken action in violation of specified provisions of law. The Attorney General must then request that the court issue an order or judgment directing a violating city to bring its housing element into substantial compliance, and the penalty for noncompliance is a fine of \$10,000 per month, with the possibility of multipliers for continued noncompliance.

City's right to control the use of land within its jurisdiction has been consistently recognized by the California Supreme Court as a municipal affair. As a charter city, City has supreme authority over the regulation of land use and zoning within its borders. SB 35 and AB 101 violate the municipal affairs doctrine, which provides that a charter city will not be governed by state law in respect to municipal affairs. The regulation of local land use and local zoning is a vital and core function of local government and therefore is a municipal affair of a charter city.

State has a clear, present, and ministerial duty to administer the California Constitution and laws of the state, including SB 35 and AB 101, without interfering with City's zoning and land use authority. State's action in enacting SB 35 unconstitutionally ignores and undermines City's rights as a charter city under the municipal affairs doctrine to the detriment of the health, welfare, and safety of its residents, as well as the authority of a charter city to establish and provide for an orderly system of zoning and land use regulations.

City seeks a writ of mandate and declaratory relief prohibiting State from enforcing SB 35 and AB 101.

2. Petition 30-2019-01048692

Petitioner City commenced this proceeding on February 1, 2019 in the Orange County Superior Court. The Petition alleges claims for traditional mandamus pursuant to CCP section 1085 and for declaratory relief. The Petition alleges in pertinent part as follows.

SB 166 amended section 65863 regarding "No Net Loss" local zoning and land use. SB 166 was part of a housing package intended to address the state's alleged housing shortage and high housing cost. When enacting SB 166, the Legislature correctly determined that the law would not apply to charter cities.

In 2018, the Legislature enacted SB 1333, which again amended section 65863 and through *post hoc* rationalization declared that it applies to all charter cities. The unconstitutional mandates of SB 166 impermissibly strip City's constitutionally protected charter city authority with respect to local zoning municipal affairs.

In conjunction with SB 1333, SB 166 creates a system where State controls how, where,

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and when housing is built in every city in California, regardless of charter city status, and unconstitutionally purports to vest and exercise authority in the state to rezone established local land designations for political purposes.

City's right to control the use of land within its jurisdiction has been consistently recognized by the California Supreme Court as a municipal affair. As a charter city, City has supreme authority over regulation of local land use and zoning within its borders. SB 166 violates the municipal affairs doctrine, which provides that a charter city will not be governed by state law in respect to municipal affairs. The regulation of local land use and local zoning are vital and core functions of local government, and therefore municipal affairs, of a charter city.

State has a clear, present, and ministerial duty to administer the California Constitution and laws of the State of California, including section 65863, without interfering with City's zoning and land use authority. In enacting SB 166 and SB 1333, the Legislature unconstitutionally ignored and undermined City's rights as a charter city to control the zoning and land use designations within its borders to the detriment of the health, welfare, and safety of its residents.

City seeks mandamus prohibiting State from enforcing amended section 65863 against it and a declaration that section 65863, as amended by SB 166 and SB 1333, is an unconstitutional overreaching into a charter city's ability to create local zoning schemes.

3. Course of Proceedings

Petition 30-2019-01044945 (concerning SB 35) and Petition 30-2019-01048692 (concerning SB 166 and SB 1333) are Orange County Superior Court cases that were assigned to the court on March 19, 2019. On June 4, 2019, the court consolidated the two cases with 30-2019-01044945 as the lead case. The parties stipulated that, although properly declaratory relief, the case may be tried on paper as mandamus.

On July 25, 2019, the court granted the Commission's motion for permissive intervention. The court also granted HC and the CCRH leave to intervene on the condition that they and the Commission file a joint intervenors' brief.

B. The Municipal Affairs Doctrine

1. Article XI, Section 5(a)

"[T]he question whether the power exists to forbid the erection of a building of a particular kind or for a particular use... is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality." Euclid v. Ambler Realty Co., (1926) 272 U.S. 365, 388. "The power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities." Schad v. Mt. Ephraim, (1981) 452 U.S. 61, 68 (emphasis added.) Pet. Op. Br. at 11.

Section 5(a) of article XI of the California Constitution provides that a charter city shall not be governed by State law in respect to "municipal affairs", for which charter cities' laws are "supreme and beyond the reach of [State] legislative enactment." California Federal Savings & Loan Assn. v. City of Los Angeles, ("California Federal Savings") (1991) 54 Cal.3d 1, 12 (quoting Ex Parte Braun, (1903) 141 Cal. 204, 207.) The California Supreme Court has summarized article XI, section 5:

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Article XI, section 5... addresses the “home rule” powers of charter cities.... “It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution [] shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.” Johnson v. Bradley, (1992) 4 Cal. 4th 389, 397-98 (emphasis added).

The California Supreme Court also has stated: “We have recognized that a city’s or county’s power to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the state.” DeVita v. County of Napa, (“DeVita”) (1995) 9 Cal. 4th 763, 782.) “The Legislature, in its zoning and planning legislation, has recognized the primacy of local control over land use.” Id. “[T]he Legislature has been sensitive to the fact that planning and zoning in the conventional sense have traditionally been deemed municipal affairs. It has thus made no attempt to deprive local governments... of their right to manage and control such matters, but rather has attempted to impinge upon local control only to the limited degree necessary to further legitimate state interests.” Id. (citation omitted). Pet. Op. Br. at 11-12.

The Legislature expressly “recognizes that the capacity of California cities and counties to respond to State planning laws varies due to the legal differences between cities and counties, both charter and general law, and to differences among them in physical size and characteristics, population size and density, fiscal and administrative capabilities, land use and development issues, and human needs.” §65300.9 (emphasis added). Indeed, until recently, the Legislature has expressly declared that the diversity of the State’s communities and their local needs require local legislative bodies to implement local planning requirements in ways that accommodate local conditions and circumstances. §65300.7.

2. The Analytical Framework

Historically, judicial consideration of charter cities’ authority over municipal affairs suffered from an *ad hoc*, case-by-case approach. California Federal Savings, *supra*, 54 Cal. 3d at 5, 15-16. In California Federal Savings, the California Supreme Court set forth an analytical framework “for resolving municipal affairs and statewide-concern questions under subdivision (a) of article XI, section 5.” Johnson v. Bradley, *supra*, 4 Cal. 4th at 399.

This analytical framework was subsequently re-articulated in a four-part test in State Building & Construction Trades Council of California v. City of Vista, (“Vista”) (2012) 54 Cal. 4th 547, 556, as follows: (1) a court first must determine whether the city’s authority at issue regulates an activity that can be characterized as a “municipal affair”; (2) second, the court “must satisfy itself that the case presents an actual conflict between local and state law; (3) third, the court must decide whether the state law addresses a matter of “statewide concern.”; and (4) fourth, the court must determine whether the law is “reasonably related to ... resolution” of that concern and “narrowly tailored” to avoid unnecessary interference in local governance.” Id. If the court is persuaded that the subject of the state statute is one of statewide concern and is reasonably related to its resolution, then the conflicting charter city measure ceases to be a municipal affair *pro tanto* and the Legislature is not prohibited by article XI, section 5(a) from

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addressing the statewide dimension by its own tailored enactments.” Id.

C. Land Use Law

1. Background

“Zoning laws regulate land uses in two basic ways. Some uses are permitted as a matter of right if the uses conform to the zoning ordinance. Other sensitive land uses require discretionary administrative approval pursuant to criteria in the zoning ordinance. They require a conditional use permit.” Save Lafayette Trees v. City of Lafayette, (2019) 32 Cal.App.5th 148, 155 (citations and internal punctuation omitted).

In 1917, the Legislature passed the first statute enabling cities to enact zoning ordinances. Miller v. Board of Public Works, (1925) 195 Cal. 477, 483. In 1925, the California Supreme Court observed that a city may not enact “unreasonable and discriminatory” zoning ordinances. Id. at 489. In 1927, the Legislature reserved to the state an oversight role in local land use and zoning by prescribing that all general law cities had to adopt general or master plans for land development. DeVita, *supra*, 9 Cal.4th at 772. In 1976, the California Supreme Court held that a city would exceed its police power with a zoning decision “if [the] restriction significantly affects residents of surrounding communities.” Associated Homebuilders of the Greater East Bay, Inc. v. City of Livermore, (1976) 18 Cal.3d 582, 601. State Opp. at 11-12.

In the history of zoning laws, single-family residence zoning districts have been hallmarks of land use. *See, e.g.*, Fourcade v. City and County of San Francisco, (1925) 196 Cal. 655, 659 (describing zoning district). Ewing v. City of Carmel-By-The-Sea, (1991) 234 Cal.App.3d 1579, 1589 (same); Consaul v. City of San Diego, (1992) 6 Cal.App.4th 1781, 1787-89 (city council rezoned land area to single-family residential in order to block multi-family housing development). State Opp. at 12-13.

2. The Planning and Zoning Law

In 1965, the Legislature enacted the Planning and Zoning Law (§65000 *et seq.*). County of Santa Barbara v. Purcell, Inc., (1967) 251 Cal.App.2d 169, 174. That law declares:

“The Legislature [...] finds that decisions involving the future growth of the [S]tate, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan, and should proceed within the framework of officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors.” §65030.1 (emphasis added). State Opp. at 13.

Under the Planning and Zoning Law, the State has regional planning districts (§65061), each of which prepares, maintains, and revises a regional land-use plan, seeking to harmonize the master or general plans of the region’s cities. §65061.1. Regional planning encompasses transportation planning (§65070) and congestion management (§65088). Each city has a planning agency (or chooses to have its city council play that role). §65100. Each city must “adopt a comprehensive, long-term general plan for the physical development of the city.” §65300. A

general plan consists of a “statement of development policies [...] setting forth objectives, principles, standards, and plan proposals.” §65302.) A general plan includes multiple elements: land use, circulation (movement of people and vehicles), housing (discussed further below), conservation, open space, noise, safety, and environmental justice. *Ibid.* These plans are filed with their regional planning districts. §65067. The city’s planning agency must implement (§65103) and administer (§65400 *et seq.*) the general plan. State Opp. at 13-14.

In 1971, the Legislature required general law cities’ zoning ordinances to be consistent with their general plans. §65067. Before that, a general plan was considered “merely an ‘interesting study.’” *DeVita, supra*, 9 Cal.4th at 772 (quoting *City of Santa Ana v. City of Garden Grove*, (1979) 100 Cal.App.3d 521, 532). The Legislature subsequently enacted statutes aimed at requiring cities to act consistently with their general and specific plans. *See* §65300.5 (requiring that city’s general plan and elements “comprise an integrated, internally consistent, and compatible statement of policies”); §65301.5 (subjecting adoption of general plan or amendment to mandamus challenge); §65359 (requiring city’s specific plan to be consistent with general plan); §65450 (similar); §65454 (similar); §65455 (requiring local public works projects, tentative maps, parcel maps, and zoning ordinances to be consistent with specific plan); §65460.8 (consistency requirement for transit villages). State Opp. at 14.

Also in 1971, the Legislature mandated that charter cities, not just general law cities, adopt general plans with the mandatory elements. *DeVita, supra*, 9 Cal.4th at 772; *see* §65300.5. In 1979, the Legislature extended the general plan consistency requirement to charter cities with more than 2 million people (*i.e.*, Los Angeles). *City of Los Angeles v. State of California*, (1982) 138 Cal.App.3d 526, 531. State Opp. at 14.

2. The Housing Element Law

In 1969, the Legislature enacted the Housing Element Law. §65580 *et seq.* The Housing Element Law declares that “[t]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian is a priority of the highest order.” §65580. The Housing Element Law recognizes the shared responsibility of state and local government to facilitate housing development for “all economic segments of the community” (§65580(b), (d)), and the need for “cooperation of all levels of government” for the provision of affordable housing (§65580(c)).

The Legislature declared that “[d]esignating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality’s housing need for all income levels is essential to achieving the state’s housing goals....” §65580(f). “It is the intent of the Legislature in enacting this article [to] assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.” §65581; *see also San Franciscans for Livable Neighborhoods v. City and County of San Francisco*, (2018) 26 Cal.App.5th 596, 609 (discussing purpose of housing element law). State Opp. at 15; Interv. Opp. at 10.

Under the Housing Element Law, all jurisdictions, including charter cities, must adopt a housing element. §§ 65583, 65700(b). *Building Industry Assn. v. Marin Mun. Water Dist.*, (1991) 235 Cal.App.3d 1641, 1650. The housing element must make adequate provision for the housing needs of all economic segments of the community. §65583. The housing element must contain four basic sections: (1) an assessment of housing needs and an inventory of the resources and

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constraints relevant to meeting those needs (§65583(a)); (2) a statement of the city's goals, objectives, and policies relative to maintenance, preservation, improvement, and development of housing (§65583(b)); (3) a five-year schedule of action to achieve the goals and objectives (§65583(c)); and (4) a review and evaluation of the prior element (§65583(d)). The housing element must be consistent with the policies identified in the general plan. §§ 65300, 65359, 65582(f). To plan for the community's share of the state housing needs, a housing element must include an assessment of the existing and projected housing need for each income level, identify resources and constraints relevant to meeting that need, and implement programs to address the need. §65583(a), (c). State Opp. at 15; Interv. Opp. at 10.

Every eight years, HCD, relying on data supplied by the Department of Finance, assigns a target number or goal for additional housing units in each region of the state in a RHNA divided into four income levels: very low, low, moderate, and above moderate income. §65584(a)(1), (f); Then the regional Council of Governments (or in some cases HCD) allocates a share of the regional housing need for each income level to each city and county in its region. §65584.05. The locality must then prepare a housing element that accommodates its allocated share of the RHNA. See §§ 65583, 65583.2. Interv. Opp. at 11; State Opp. at 15-16.

Key to a city's accommodation of its allocated RHNA at each income level is the requirement that the city's housing element include an inventory of sites suitable and available for residential development during the planning period. §§ 65583(a)(3), 65583.2(a); see Creswell Decl., ¶13. The inventory must detail information about the sites -- such as size and type of zoning -- as well as a determination of what portion of the RHNA each site can accommodate by income level. §65583.2(b), (c). To aid with this determination, the Housing Element Law provides set densities (housing units per acre) deemed appropriate to accommodate lower-income housing. §65583.2(c)(3)(B). For jurisdictions in a metropolitan county, sites allowing at least 30 units per acre represent the appropriate density to facilitate lower-income development. §65583.2(c)(3)(B)(iv). When a jurisdiction's inventory lacks the sites to accommodate its full RHNA allocation, its housing element must include a program to rezone and make additional sites available within three years to accommodate any unmet RHNA. §65583(c)(1)(A). Interv. Opp. at 11.

Before a city can adopt a housing element, it must be submitted to HCD to review whether it complies with the Housing Element Law. §65585. A city also must regularly review and revise its housing element to make sure that it continues to advance the city's goals, objectives, and policies. §65588(e)(4).

Each year, the city must report to both the Governor's Office of Planning & Research and HCD the progress made in implementing the programs of the housing element. §65400. Based on that report, HCD has the power to find that a housing element is not in compliance with the city's general plan. §65585. In such an instance, HCD may refer the matter to the Office of the Attorney General for an enforcement action. §65585(i), (j). The Attorney General may bring litigation against the non-complying city that may lead to a court order circumscribing the city's power to approve new housing development, by either suspending that power or requiring the city to approve a proposed residential development containing affordable housing. §§ 65754, 65754.5, 65755. State Opp. at 16-17.

The housing element is the only part of a city's general plan that is subject to substantial oversight by State. That oversight began in 1980 via statutory amendments to the Housing Element

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Law and reflects the fact that there have been high degrees of local non-compliance with the law for many years. Coy Decl., Ex. 1, pp. 26-32. In 1991, HCD certified only 19% of localities as having a compliant housing element. More recently, that figure has increased to 55%. Coy Ex. 1, p. 14. State Opp. at 16.

The Housing Element Law and RHNA zoning law (§65863) were not originally intended to apply to charter cities. This was because section 65700 expressly provided that Chapter 3 (Local Planning) “shall not apply to a charter city, except to the extent that the same may be adopted by charter or ordinance of the city.” Stats. 1965, ch. 1880, §5, p. 4345. The same legislation added Chapter 4 (Zoning Regulations) and similarly provided in section that Chapter 4 does not apply to a charter city. Stats. 1965, ch. 1880, §6, p. 4345-46. Pet. Op. Br. at 8.

A 1971 amendment to section 65700 imposed a requirement that charter cities adopt a general plan, including a housing element, for land use development within their boundaries. Pet. RJN Ex. H (Stats. 1971, ch. 1803, §2, p. 3904). The components of a charter city’s housing element were discretionary. A 1982 amendment added an exception that new sections 65590 and 65590.1, relating to affordable housing in the coastal zone, apply to charter cities. Pet. RJN Ex. I (Stats. 1982, ch. 43, §§ 3-4, pp. 105-09). A 2017 amendment (AB 879) added another exception that section 65400 (imposing a reporting requirement on planning agencies) applied to charter cities. Pet. RJN Ex. J (AB 879, §3).

In other words, state law through 2017 reflected -- with the exception of the coastal zone provisions (§§ 65590, 65590.1) -- charter cities’ home rule authority over the substance of local land use planning and zoning. Pet. Op. Br. at 8.

D. The Housing Bills

The Housing Bills are codified in title 7 (Planning and Land Use), division 1 (Planning and Zoning), of the Government Code and changed the inapplicability of the Housing Element Law and RHNA zoning laws to charter cities.

1. SB 35 (2017)

SB 35 was passed in 2017 and as pertinent amended sections 65400 and 65582.1 and added section 65913.4. City RJN Ex. M.

New section 65913.4 provides that a developer of multi-family housing may access a streamlined ministerial approval process which bypasses the California Environmental Quality Act (“CEQA”) and the need for a conditional use permit (“CUP”) in certain circumstances. §65913.4. The circumstances include that (1) the proposed development will be located on an infill site; (2) the city has issued fewer building permits than necessary to meet its RHNA allocation; (3) the development would have at least a mandated minimum of below market-rate units; and (4) the development is consistent with the city’s objective zoning and design review standards. *Id.* If a city determines that the proposed development does not meet the criteria for streamlined approval, it must timely provide the proponent with written documentation of the proposal’s shortcoming(s) or else the proposal is deemed to satisfy the requirements. *Id.* Pet. Op. Br. at 5-6; State Opp. at 18.

SB 35 provides that if a city (general or charter) approves a project under this scheme, the approval will not expire -- even if developer does not begin construction -- if the project includes affordable housing. SB 35 prohibits a city from adopting any requirement for such a project solely

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or partially on the basis that it is subject to the streamlined approval. Pet. Op. Br. at 6.

City acknowledges that SB 35 states that it was enacted to address a “statewide housing crisis.” City contends that the effect of SB 35 is to commandeer a city’s discretionary land use authority over where and how housing construction takes place within its boundaries. SB 35 creates a system where State controls how, where, and when housing is built in throughout California, and essentially imposes a state-wide permissive overlay on local land use. Pet. Op. Br. at 6-7.

2. SB 166 (2017) (No Net Loss Zoning)

Historically, most local governments adopted housing elements with site inventories and site rezoning programs to fully accommodate their lower-income RHNA. 2017 LAO Rpt., Kotval Decl., ¶9, Ex. 7, p. 5. When affordable housing developments began to take place on these sites, local governments yielded to neighborhood pressure and reduced site density to hinder these developments. See Comm. on Judiciary AB 2292, Interv. RJN Ex. 1, p. 2.

To address this issue, in 2002 the Legislature passed AB 2292 (the “No Net Loss Law”), which prohibits a local jurisdiction from reducing residential density below the figures used in its housing element unless certain conditions are met. §65863 (added by Stats. 2002, c. 706 (AB 2292, §1)). AB 2292 requires a city to ensure that its housing element inventory⁵ can accommodate its share of the RHNA throughout the planning period. Section 65863 provides that a city may not allow development of a parcel of land with fewer units by income category than the share allocated in a city’s housing element unless the city makes written findings supported by substantial evidence that the reduction in density is consistent with the locality’s general plan and housing element, and that the remaining sites identified in the housing element are adequate to accommodate the jurisdiction’s share of the regional housing need. §65863(b)(1)(A), (B).

In 2017, the Legislature passed SB 166 to strengthen the No Net Loss Law by closing loopholes, including a city’s ability to approve “high-end market-rate housing” or commercial uses on sites identified in their housing elements for lower income households. Interv. RJN Ex. 2, pp. 5-6.

As amended by SB 166 (City RJN Ex. N), section 65863 requires that once a site is identified in a city’s RHNA allocation, that site must remain available or, if built upon, the city must within 180 days identify a new site to accommodate its RHNA allocation. Essentially, SB 166 requires a city to maintain adequate sites for low-cost housing development at all times, not just at the beginning of the eight-year RHNA cycle. Pet. Op. Br. at 10; State Opp. at 18.

SB 166 did not amend section 65700, and therefore SB 166 did not apply to charter cities.

3. SB 1333 (2018)

In 2013, HCD approved City’s 2013-2021 housing element. Covarrubias Decl., ¶25. The housing element identified enough sites to meet its very low and low-income RHNA by incorporating multi-family zoned sites in City’s Beach and Edinger Corridors Specific Plan (“BECSP”). See Kotval Decl., ¶10, Ex. 8, pp. V-5, V-22–V-23; Covarrubias Decl., ¶25. Facing community opposition to high density development in the BECSP (Covarrubias Decl., ¶26), City

⁵ “Housing element inventory” means the sites identified within a city where zoning and land use designations allow for housing to be built. Pet. Op. Br. at 9, n.13.

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amended the BECSP in May 2015 (“Amendment”) to reduce the number of units that can be developed, impose development standards, and require City approval of any development. *See* Kotval Decl., ¶11, Ex. 9; Covarrubias Decl. ¶ 27. The Amendment created a RHNA allocation shortfall of 413 very low and low-income units. Kotval Decl., ¶13, Ex. 11, p. 3.

In July 2015, Kennedy Commission filed suit against City in Kennedy Comm’n v. Huntington Beach, Case No. 30-2015-00801675. Kennedy Commission alleged that the Amendment was inconsistent with City’s adopted housing element and that City had failed to identify alternate sites to accommodate the low-income RHNA shortfall created by the Amendment. *See* Kotval Decl. ¶14, Ex. 12, ¶¶ 50-86. On January 20, 2016, the trial court found the Amendment void *ab initio* and issued a writ of mandate ordering City to cease enforcing it.

The appellate court reversed in Kennedy Comm’n v. City of Huntington Beach, (“Kennedy Commission”) (2017) 16 Cal. App. 5th 841. Reasoning that section 65700 exempted charter cities from California’s local planning provisions, the court held that City was exempt from section 65454’s requirement that a city’s specific plans be consistent with its general plan and housing element unless City expressly adopted this consistency requirement. *Id.* at 853-60.

The Legislature deemed this appellate decision to be a loophole left open by its failure in SB 166 to amend sections 65803 and 65700 to expressly apply section 65863’s mandatory RHNA provisions and the broader provisions of the Housing Element Law to charter cities.

Passed in 2018, SB 1333 made the Housing Element Law in its entirety, and other planning and zoning provisions dedicated to the promotion of housing development, expressly applicable to charter cities. City RJN Ex. P. The author of SB 1333, Senator Bob Wieckowski, stated that the Kennedy Commission decision “threaten[ed] to undermine [...] critical reforms from the 2017 Housing Package,” and explained that by making the Housing Element Law and other statutory sections expressly applicable to charter cities, “SB 1333 will ensure that charter cities do not inappropriately subvert the goals stated in required general plan policies, including approved Housing Elements, and that local planning is internally consistent and not undermined by site-specific decisions.” Assembly, Senate Third Reading, Analysis of SB 1333 (Aug. 24, 2018), pp. 3-4. State Opp. at 17.

SB 1333 expressly made section 65863, the No New Loss Law, applicable to charter cities. City RJN Ex. P. If a charter city approves the downsizing of a site identified in the housing element as available for development at greater density, or approves a development of market-rate housing units on a site identified as available for lower-income housing, then the city may violate the No Net Loss Law. SB 1333 also expressly provides that several other sections of the Government Code’s Planning and Zoning laws apply to charter cities: sections 6536, 65852.10, 65852.25, 65860, 65863.4, 65863.6, 65863.8, 65866, 65867.5, 65869.5.⁶ SB 1333 further amended section

⁶ Sections 65866, 65867.5, and 65869.5 are contained in the Development Agreements Law (§65864 *et seq.*), which authorizes local agencies to enter development agreements with real-estate project builders, entitling them to proceed on their projects under the local rules, regulations, and ordinances in effect at the time of their approvals. North Murrieta Community, LLC v. City of Murrieta, (2020) 50 Cal.App.5th 31 41. The law gives builders some assurance of regulatory stability, given that projects often take years or even decades to complete, and local regulations can and do change over such periods of time. *Ibid.* The development agreements are contracts, enforceable like other contracts. *Id.* at 44. State Opp. at 17-18.

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65700 to extend the applicability of sections 65300.5, 65301.5, 65359, 65450, 65454, 65455, 65460.8, 65590, 65590.1, and Article 10.6 (commencing with section 65580) to charter cities. Pet. Op. Br. at 9; State Opp. at 18.

City argues that SB 1333 represents a tectonic shift in the separation of powers and unconstitutionally treads on charter cities' traditional control over local land use and zoning. Pet. Op. Br. at 10.

4. AB 101 (2019)

AB 101 was adopted in 2019 and it amended section 65585 to require the Attorney General, and the courts, to follow a specific statutory procedure if HCD finds that a city's housing element is not substantially in compliance with the Housing Element Law (§65589.5) and RHNA zoning law (§65863). §65585(j)-(m).

AB 101 requires HCD to notify a city, and then authorizes HCD to notify the Attorney General, that the city is in violation of state law if its housing element is not in substantial compliance. City RJN Ex. O. In any action brought by the Attorney General for a violation of Planning Zoning/Housing Element Law, the Attorney General must request the court issue an order or judgment directing a violating city to bring its housing element into substantial compliance. *Id.* AB 101 requires that the superior court conduct a status conference if a city has not complied with such an order. *Id.*

If the superior court determines that a city failed to comply with the order, the court must impose fines. *Id.* The fines are \$10,000 per month, not to exceed \$100,000 per month (unless the fines are multiplied by a factor of three or six). *Id.* If the city has not complied with the order or judgment within specified time periods after the imposition of fines, AB 101 requires the court to conduct additional status conferences and multiply the amount of the fine by three and then six and order the appointment of an agent of the court to bring the city's housing element into substantial compliance. *Id.* Pet. Op. Br. at 7.

E. Statement of Facts⁷

1. City's Evidence⁸

"The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter or in the Constitution of the State of California." City Charter §103. "The general grant of power to the City under this Charter shall be construed broadly in favor of the City. The specific

⁷ Petitioner City failed to include the parties' evidence with the trial notebook.

⁸ City requests judicial notice of (1) City Charter (Ex. C), (2) Huntington Beach Municipal Code ("HBMC") sections 2.33.010 *et seq.* and 2.34.010 *et seq.* (Ex. D), (3) City Zoning and Subdivision Code titles 20-25 (Ex. E), (4) HCD SB 35 Statewide Determination Summary (7/30/20) (Ex. F), (5) Pertinent portions of Statutes of California, Stats. 1965, ch. 1880 (Ex. G), (6) Pertinent portions of Statutes of California, Stats. 1971, ch. 1803 (Ex. H), (7) Pertinent portions of Statutes of California, Stats. 1982, ch. 43 (Ex. I), (8) Assembly Bill 879 (2017) (Ex. J); and (9) the Housing Bills (Exs. M-P). The requests are granted as to Exhibits C-E, G-J. Evid. Code §452(b), (c). Exhibit F is not subject to judicial notice and the request is denied.

provisions enumerated in this Charter are intended to be and shall be interpreted as limitations upon the general grant of power and shall be construed narrowly.” City Charter §104.

City’s general plan guides its future land use decisions. A city’s general plan is the “constitution for all future development” within its borders. Lescher Communications Inc. v. City of Walnut Creek, (1990) 52 Cal. 3d. 531. City’s general plan includes a comprehensive long-term plan for City development and includes zoning maps and development goals to achieve the policy recommendations. City has a Department of Community Development and a Planning Commission, which have the duty to administrate the approval process for City’s land use decisions. City RJN Ex. D (HBMC §§ 2.33.010, 2.34.010; City Zoning Ordinances titles 20-25). City has promulgated a comprehensive scheme of regulating land use within its borders. Pet. RJN Ex. E (Huntington Beach Zoning and Subdivision Ordinance (“HBZSO”) Title 20-25).

The U.S. Department of Housing and Urban Development has observed that Redevelopment Agencies (“RDAs”) created 63,600 new affordable housing units and that 44% of the new housing units constructed by RDAs from 2011 to 2008 were affordable at the very low-income level. Gates Decl., Ex. K, p. 4. Before their dissolution, RDAs were an important source of gap funding for federal affordable housing development funds and a longstanding and heavily-used source of funding for affordable housing in California. Gates Decl., Ex. L, p. 3.

City’s expert, Nicole Sauviat Criste (“Criste”), opines that the Legislature clearly intended to vest local governments with the authority to control land use in their local jurisdictions. Criste Decl., Ex. B, pp. 1-2. State’s general plan reflects this perspective and demonstrates that the Governor believes that land use is a matter of local control. Id., pp. 2-4. City’s planning practice is consistent with this legislative intent. Id., p. 5. The flexibility given to cities to control their local issues is critical in enabling cities to regulate consistent with their residents’ wishes. Id. Cities are also better situated to manage land use because zoning standards must be based on factors local in nature. Id., pp. 5-6.

Because there is a multiplicity of types of local jurisdictions (*e.g.*, urban, rural, agricultural, industrial), local control over land use and zoning is necessary to meet local needs and concerns, based on local resources and infrastructure. Id., pp. 3-6. For instance, parking requirements in single family residential zones should reflect the demographics of the city – Palm Springs with only two persons per household needs less additional parking than Indio with 3.4 persons per household. Id., p. 6.

Another expert witness, Wendell Cox (“Cox”), opines that the RHNA allocation process imposed by the Housing Bills has no prospect of achieving its housing unit objectives because the funding required for lower income housing subsidies is scarce and because market prices for housing are beyond the financial ability of most middle-income households to afford. Cox Decl., Ex. A, p. 1. These deficiencies cannot be solved by cities. Id.

To the extent there is a shortage of affordable housing production, the fundamental issue is the lack of sufficient funding to build it. Id., pp. 7-8. Through 2018, only 9% of RHNA allocations at the very low-income, and only 13% of RHNA allocations at the low-income, categories have issued permits. Id., p. 13. Builders have not been developing low-income housing however much cities have planned for it. Id. In effect, the RHNA process requires cities to plan for more than ten times the amount of subsidized housing that can be funded. Id., p. 13

City’s rate of permitting housing development outpaced all Orange County cities other than Irvine and is greater than California as a whole. Id., 18-19. Whereas the funding for building

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market rate housing has been sufficient to meet the need in Orange County, and the permitting of very low-income and low-income housing in Orange County has outpaced the rest of the state, less than a quarter of RHNA allocations in those affordable housing categories have been issued permits. *Id.*, pp. 24-25. In addition to insufficient funding, City is particularly unfit for affordable housing production because transit access to lower income jobs is constrained. *Id.*, pp. 51-54.

2. State's Evidence⁹

State's expert, Melinda Y. Coy ("Coy"), a land use and planning manager with HCD, opines that the Housing Bills are critical for addressing the state's housing crisis and their application to charter cities is necessary to increase the supply of housing. Coy Decl., ¶9. People burdened in paying for housing suffer an array of problems in physical and mental health, nutrition, education, and job performance. *Id.*, pp. 15-23. Businesses have a harder time recruiting employees, who cannot afford the cost of living. *Id.*, p.20. The overall economy is negatively impacted. *Id.*, pp. 20-21.

Over the last several decades, California has produced 2.3 million fewer housing units than are needed for the people already here. *Id.*, pp. 3-5. The gap between the human population and the number of housing units is growing. *Id.* Housing prices, whether for sale or rental, are exceedingly expensive all over the state. *Id.*, pp. 5-8.

In 1991, HCD certified only 19% of localities as compliant with their housing elements. By 1995, that figure increased to 52% and has remained more or less at that level until very recently. Coy Decl., Ex. 1, p. 14. Even with charter city participation in the 2013-21 cycle of RHNA, the state has achieved 55% of the goal for zoning for and building more housing for people at all income levels. *Id.*, p. 14. If all charter cities opted out, the rate would be at only 22%. *Id.*

What happens in one city's housing market indisputably spills over city boundary lines and affects other cities. *Id.*, pp. 8-13. Over the last 30 years, the median sales prices for existing homes in California, the Los Angeles Metro region (the counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura), and Orange County on its own, trace almost exactly the same price increases. *Id.*, p.10, Fig. 9. This is also reflected by home and condominium sales prices in the City and the surrounding cities—Costa Mesa, Fountain Valley, Garden Grove, Santa Ana, Seal Beach, and Westminster—and Orange County as a whole. *Id.*, p.11, Fig. 9.

Since section 65852.150 has been in place, albeit not binding on charter cities, the number of ADU permits issued in the state has multiplied by eight times. *Id.*, p. 39.

⁹ State requests judicial notice of: (1) Sen. Rules Comm., Office of Senate Floor Analyses, Unfinished Business, Analysis of SB 35 (2017-2018 Reg. Session) (Sept. 15, 2017) (Ex. 2); (2) Sen. Rules Comm., Office of Senate Floor Analyses, Unfinished Business, Analysis of SB 166 (2017-2018 Reg. Session) (Sept. 15, 2017) (Ex. 3); (3) Assembly, Senate Third Reading, Analysis of SB 1333 (2017-2018 Reg. Session) (Aug. 24, 2018) (Ex. 4); and (4) Assembly, Senate Third Reading, Analysis of SB 1333 (2017-2018 Reg. Session) (Aug. 17, 2018) (Ex. 5). The analyses are subject to judicial notice as legislative history and the requests are granted. Evid. Cod §452(c).

State refers to a Declaration of Jonathan M. Eisenberg (Resp. Opp. at 9, fn.3) but failed to file such a document.

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3. Intervenors' Evidence¹⁰

Housing is generally considered affordable when a household spends 30% or less of their income on it. Wiener Decl., ¶19. Renters in California need to earn 2.9 times the state minimum wage to afford the average monthly rent of \$1,982 for a two-bedroom apartment. Kotval Decl., ¶3, Ex. 1, p. 4. Across the state, 79% of extremely low-income households and 54% of very low-income households pay more than 50% of their income on housing. *Id.*, p. 3.

Renters in Orange County must earn 3.2 times the state minimum wage (or \$43.23 per hour) to afford the average monthly rent of \$2,196 for a two-bedroom apartment. Kotval Decl., ¶4, Ex. 2, p. 3. Orange County's high housing costs disproportionately burden low-income households, with 81% of extremely low-income households paying more than half of their income on housing costs compared to 1% of moderate income households. *Id.* at p. 2. In the City, 46% of all renters and 73% of its lower-income renters spend over 30% of their income on housing—leaving seniors, persons with disabilities, and female-headed households with children most vulnerable to losing their housing because they cannot afford the rents. Kotval Decl., ¶ 5, Ex. 3, p. II-40. According to City, 80% of the 61,000 persons employed within its boundaries commute from outside City limits, indicative of the shortage of local affordable housing opportunities for the community's workforce. Kotval Decl., ¶5, Ex. 3, p. II-6.

Orange County saw a 43% increase in homelessness between 2017 and 2019. Kotval Decl., ¶6, Ex. 4 at p.9. Against this backdrop, the high demand for affordable housing in Orange County has been unprecedented, as exemplified when a recent 80-unit affordable housing development in Irvine received 6,818 applications. Covarrubias Decl., ¶22.

The statewide housing crisis extends to the rural areas of California. In the San Joaquin Valley, 70% of low-income residents spend 50% or more of their income on housing. Wiener Decl., ¶19. In the Salinas and Pajaro Valleys, farmworkers are suffering extreme overcrowding, living seven people per dwelling compared with 3.2 overall in Monterey County and 2.6 overall in Santa Cruz County. *Id.* at ¶20.

Because California's 121 charter cities have nearly half of the state's population, including its largest 15 cities, the lack of affordable housing in those cities has a significant impact on the statewide housing crisis. Wiener Decl., ¶28. Housing scarcity and higher prices in charter cities would drive up housing costs for the surrounding region by increasing demand and infrastructure needs outside municipal borders. *See* Wiener Decl., ¶32; *see also* Kotval Decl., ¶8, Ex. 6 at pp. 10-12. When charter cities adopt exclusionary policies, they impact the surrounding region,

¹⁰ Intervenors request judicial notice of: (1) California State Assembly, Committee on Judiciary, analysis of Assembly Bill No. 2292 (2001-2002 Reg. Sess.) (Apr. 16, 2002) (Ex. 1); (2) California State Senate, Senate Rules Committee, analysis of Senate Bill No. 166 (2017-2018 Reg. Sess.) (Sep. 15, 2017) (Ex. 2); (3) Office of Senator Bob Wieckowski SB 1333 Fact Sheet (2017-2018 Reg. Sess.) (updated Mar. 6, 2018) (Ex. 3); (4) California State Senate, Senate Rules Committee, analysis of Senate Bill No. 1333 (2017-2018 Reg. Sess.) (Aug. 30, 2018) (Ex. 4); (5) California State Assembly, Committee on Local Government, analysis of Senate Bill No. 166 (2017-2018 Reg. Sess.) (Jun. 28, 2017) (Ex. 5); and (6) California State Senate, Senate Third Reading analysis of Senate Bill No. 1333 (2017-2018 Reg. Sess.) (Aug. 24, 2018) (Ex. 6). The exhibits are subject to judicial notice as legislative history and the requests are granted. Evid. Code §452(c).

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causing a domino effect as increased demand for low-income housing leads other cities to adopt similar exclusionary policies. *See Wiener Decl.* ¶2.

The Housing Element Law is State's primary planning tool to address the housing needs of all current and expected households at all income levels. *Creswell Decl.*, ¶10. The RHNA requirement that cities facilitate sufficient sites with adequate zoning is necessary to State's goal for the housing needs of persons who have been priced out of the housing market. *Creswell Decl.*, ¶13. SB 166 and SB 1333 were necessary to ensure uniform compliance with RHNA requirements. *Creswell Decl.*, ¶¶ 17-18. Compliance by all jurisdiction is necessary to achieve State's housing goal. *Creswell Decl.*, ¶¶ 19-21.

F. Analysis

City seeks a writ of mandate and declaratory relief prohibiting State from enforcing the Housing Bills on the ground that they violate the municipal affairs doctrine of the California Constitution.¹¹ State and Intervenors separately oppose.

The question whether the home rule provisions of the California Constitution bar application of state law to charter cities is a bit different than a facial challenge to a statute because evidence is permitted. Nonetheless, the question turns on the meaning and scope of the state law in question and the relevant state constitutional provisions, and their interpretation presents a legal question, not a factual one. *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* ("Vista"), (2012) 54 Cal.4th 547, 558. (citations omitted). In doing, so, courts accord great weight to the factual record that the Legislature has compiled and also to any relevant facts established in trial court proceedings. *Id.* (citing *California Federal Savings, supra*, 54 Cal.3d at 20-25). Factual findings by the Legislature or the trial court, however, are not controlling and the court ultimately must decide what areas of governance are municipal concerns and what are statewide concerns. *Id.*

The parties agree that the four-part test set forth in *Vista, supra*, 54 Cal.4th at 556 applies to determining whether the Housing Bills violate the municipal affairs doctrine. *Pet. Op. Br.* at 14; *State Opp.* at 19-21; *Interv. Opp.* at 15. The four factors are: (1) whether the subject of regulation is a municipal affair; (2) whether there is an actual conflict between the local measure and the state law; (3) whether the state law addresses a matter of statewide concern; and (4) whether the state law is reasonably related to addressing the matter and narrowly tailored not to unduly interfere with local control. *Vista, supra*, 54 Cal.4th at 556.¹²

1. Whether the Subject of Regulation is a Municipal Affair

The Housing Bills' subject is the planning, zoning, and development of land within a city's

¹¹ City does not challenge its obligations to adopt a housing element, identify sites for its housing element site inventory, and accommodate its RHNA allocation.

¹² State notes that the SAC's fourth cause of action, which challenges AB 101's amendment of section 65585 to provide new penalties for non-compliance with housing development laws as violating the California Constitution's "prohibition against Excessive Fines and Bills of Attainder." SAC, ¶¶ 85-90. State further notes that City's opening brief contains no argument concerning this legal theory. Accordingly, the SAC's fourth cause of action is denied as unsupported.

borders. Whether a subject of regulation is a municipal affair is determined by reference to both (1) article XI, section 5(b), which has an express, non-exhaustive list of municipal affairs (Anderson v. City of San Jose, (“Anderson”) (2019) 42 Cal.App.5th 683, 700), and (2) “the historical circumstances presented” (California Federal, *supra*, 54 Cal.3d at 1), which may illuminate the meaning of the term “municipal affair” in article XI, section 5(b). Vista, *supra*, 54 Cal.4th at 557-58. If the subject of regulation is not a municipal affair, then the analysis ends and State may regulate in that field without violating the home rule doctrine. *Id.* at 556.

As City notes (Pet. Op. Br. at 14), the courts and the Legislature long have recognized and repeatedly affirmed land use and zoning as quintessentially municipal affairs. Miller v. Board of Public Works, (1925) 195 Cal. 477, 495; Schad v. Mt. Ephraim, (1981) 452 U.S. 61, 68; DeVita, *supra*, 9 Cal.4th at 782; §§ 65300.7 and 65300.9.

State and Intervenors concede that the matter of land use regulation is a municipal affair. State Opp. at 22; Intervenors Opp. at 15.

2. Whether There is an Actual Conflict

If the subject of regulation is a municipal affair, then the court considers whether there is an actual, inimical conflict between the pertinent city charter provision, ordinance, or regulation, on one hand, and the state law in question, on the other hand. Vista, *supra*, 54 Cal.4th at 556. A conflict is inimical if it would be impossible to comply with both the local measure and the state law at the same time. Lanier v. City of El Centro, (2016) 245 Cal.App.4th 1494, 1505. If there is no such conflict, then the analysis is over and the local measure and the state law can lawfully co-exist. Vista, *supra*, 54 Cal.4th at 556.

City submits that this factor is satisfied *ipso facto* by the fact that it and State are opposing parties in this litigation as well as an earlier suit, Orange County Superior Court Case No. 30-2019-01046493, which was filed by the HCD over City’s alleged non-compliance with its RHNA allocation in its housing element.¹³ City submits that this factor was developed and articulated by the California Supreme Court in California Federal, and in both California Federal and Vista, the petitioners were private third parties seeking to hold charter city enactments unenforceable under state law where State was not a party. California Federal, *supra*, 54 Cal. 3d at 6; Vista, *supra*, 54 Cal. 4th at 552.) This part of the test is necessary for the court to avoid weighing in on a matter where there is no apparent dispute between a charter city and State. But City and State are the opposing parties in this litigation and there necessarily is a conflict. Reply at 4.

City is confusing a dispute or conflict between parties (City and State) with a conflict between local and state law. They are not the same, and the court cannot conclude from the fact of two lawsuits between the parties that there is a conflict between laws for purposes of home rule analysis.

City also argues that the Housing Bills’ substantive impositions and potential draconian penalties clearly conflict with its claim to home rule and local control. City has accepted the full breadth of article XI, section 5’s grant of autonomy and control over municipal affairs under and has promulgated a comprehensive plan for development and zoning administered by its

¹³ By stipulation of the parties, HCD’s petition was dismissed as moot after City adopted an amended housing element. City argues that it agreed to this resolution to become eligible for SB 2 funding to assist in homelessness prevention efforts.

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Community Development Department and Planning Commission.

In the City, a zoning designation is assigned to every legally defined parcel within a zone. The HBZSO contains zoning maps which show the location of the various zones, and the zoning code specifies which uses are permitted in those zones and the standards that apply to each use. A key goal of land use regulation is for nearby land uses to be compatible with one another. If a property owner wants to use property in a manner not consistent with the municipality's plan and zoning for the property, the owner must apply for a CUP. The permit process allows decision-makers to consider the property owner's beneficial use of the property while assuring targeted solutions to the issues raised by the non-conforming proposed use. "The reason for discretionary treatment is that these are uses which cannot be said to be always compatible in some zones while always compatible in others.... uses that should be allowed as of course, but could be allowed subject to conditions." Neighborhood Action Group v. County of Calaveras, (1984) 156 Cal. App. 3d 1176, 1183.) A strong body of law reflects judicial deference to local governing and administrative agencies in their resolution of CUP applications. Snow v. Garden Grove, (1961) 188 Cal. App. 3d 496, 504-05. Pet. Op. Br. at 16.

In sum, the CUP process highlights the traditional close degree of local control which cities exercise in determining local land use and zoning – both in the promulgation of general plans (including housing elements) and zoning schemes, as well as in considering variances for specific projects. City argues that the Housing Bills eviscerate City's scalpel of local control acutely responsive to local needs by imposing a sledgehammer of streamlined, ministerial approvals and mandated rezoning irrespective of local needs, problems, infrastructure and resources. As a result, the Housing Bills' imposition of substantive obligations and associated penalties necessarily conflicts with City's assertion of plenary control over local land use and zoning.

State points out that this prong of the test requires an actual conflict. If it would be possible to comply with City's charter or ordinance and any of the state statutes in question, then there is no conflict and no home rule problem. City of Huntington Beach v. Becerra, ("Huntington Beach") (2020) 44 Cal.App.5th 243, 269-70 (finding no conflict between a City charter provision and state statute). State notes that, although City presents the entire City Charter and zoning code as evidence, it does not specify a single local law in conflict with any state law. State Opp. at 22-23.

State speculates that this may be because HBMC section 2.34.020(a) calls for local law to harmonize with state law. That ordinance states that the duties of the City's Planning Commission derive from the Government Code, title 7—which covers all the state laws at issue -- as well as City ordinances. State Opp. at 22-23.

City properly rebuts this argument. HBMC section 2.34.020(a) describes the duties of City's Planning Commission in reference both to the Government Code "and as provided by ordinance of the City of Huntington Beach." Thus, City does not defer to state law for the Planning Commission's duties; it only lists the Government Code as a partial source of authority. And City does not refer to the Government Code at all for the City Council's authority to make final land use and zoning decisions. Reply at 4.

State further notes that many of the statutes in the challenged Housing Bills contain either permissive language stating what a charter city may, but is not required, to do, or else merely declare state policy with no directive or restriction on how a charter city exercises its authority. See, e.g., §65300.5 (mere statement of legislative intent); §65582.1 (declaration of legislative findings); §65450 (permissive language for charter city actions). State Opp. at 23. State notes that

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policy declarations carrying no accompanying mandates pose no possible conflict with charter city authority. See Huntington Beach, *supra*, 44 Cal.App.5th at p. 270 (no home rule conflict between City measure giving local police force authority, but not obligation, to enforce all laws and state law limiting local law enforcement participation in federal immigration law enforcement). State Opp. at 23-24.

City replies that the handful of scattered statutes enacted or amended by the Housing Bills merely declaring State policy can be severed from its challenge to the Housing Bills. According to City, the fact remains that the remainder of the Housing Bills impose onerous unconstitutional requirements, prohibitions, and penalties. Reply at 4.

Contrary to City's assertions, it has not demonstrated that the statutes enacted or amended by the Housing Bills necessarily conflict with City's local control such that it is impossible to comply with both simultaneously. City claims that the Housing Bills impose substantive obligations that interfere with its plenary control, but it does not show specifically what statutes conflict and why their obligations cannot be harmonized with local control. City only makes the conclusory claim that the Housing Bills' streamlined, ministerial processing of development runs directly counter to City's discretionary review of CUPs to tailor specific local needs. Reply at 4. This claim is too general and vague. How is the court to know which statutes in SB 35, SB 166, 1333, and 101 conflict with City's zoning and discretionary CUP review and why? How would the court know which statutes City agrees could be severed as permissive or merely declarative of policy?¹⁴

City has not established that there is an actual, inimical conflict between the Housing Bills and its local laws.

3. Whether the Housing Bills Address a Matter of Statewide Concern

Whether a state law addresses a matter of statewide concern hinges on "how the state constitution allocates governmental authority between charter cities and the state." Vista, *supra*, 54 Cal.4th at 557. The phrase "statewide concern" is an ultimate legal conclusion that requires courts to allocate powers between local and state legislative bodies in the most sensible and appropriate fashion. California Federal, *supra*, 54 Cal.3d at 17. "In other words, for state law to control, there must be something more than an abstract state interest, as it is always possible to articulate some state interest in even the most local of matters." Vista, *supra*, 54 Cal. 4th at 560 (quoting California Federal, *supra*, 54 Cal. 3d at 18). If the state law does not address a matter of statewide concern, then the state law does not prevail over the conflicting city measure. Vista, *supra*, 54 Cal.4th at 556. A subject of regulation can be both a municipal affair and a matter of statewide concern. Anderson, *supra*, 42 Cal.App.5th at 702; Codding Enterprises v. City of Merced, (1974) 42 Cal.App.3d 375, 377.

The outcome can depend, at least in part, on whether the subject of regulation has extraterritorial dimensions or effects, meaning that it does not obey city boundaries but rather spills over and beyond them, and therefore is appropriately addressed on a statewide basis. Vista, *supra*, 54 Cal.4th at 557-58. This determination is made based on case law, historical circumstances

¹⁴ On a related issue, State argues that the court should deny the SAP without examining the Vista factors because City fails to particularize an attack on any state law and does not provide any home rule analysis for any of the individual statutes. State Opp. at 21-22. The court agrees.

presented in the trial court, and legislative declarations, findings, and history, which are entitled to great weight, but are not controlling. California Federal, *supra*, 54 Cal. at 18, 20, n. 16; Vista, *supra*, 54 Cal.4th at 558. The court is required to defer to legislative estimates regarding the significance of a given problem and the responsive measures that should be taken toward its resolution.” California Federal, *supra*, 54 Cal.3d at 24. Any fair, reasonable and substantial doubt whether a matter is a municipal affair or broader state concern must be resolved in favor of the legislative authority of the state. City of Los Angeles v. Tesoro Refining and Marketing Co., (2010) 188 Cal.App.4th 840, 848-49. If the Legislature has established a comprehensive regulatory scheme for a subject, then the express or implied goal of uniformity suffices to preclude local action that would disrupt that uniformity. Fiscal v. City and County of San Francisco, (2008) 158 Cal.App.4th 895, 919 (firearms regulations) (*citing* Long Beach Police Officers Assn. v. City of Long Beach, (1976) 61 Cal.App.3d 364).

In Vista, the state law required cities to pay workers at the prevailing wage set by the director of the Department of Industrial Relations. 54 Cal.4th at 560-61. The plaintiff labor union challenged a city charter measure proclaiming that the city would not comply with this state law for its public works projects. *Id.* at 552-53. The union argued that there is a statewide concern for the state’s prevailing wage law based on the “trend toward economic regionalization, with workers driving long distances to a jobsite and multiemployer collective bargaining agreements governing the terms of employment on a regional basis.” *Id.* at 561.

The California Supreme Court admonished that the “hinge of [the statewide concern issue] is the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations.” 54 Cal. 4th at 560 (citation omitted). “In other words, for state law to control, there must be something more than an abstract state interest, as it is always possible to articulate some state interest in even the most local of matters.” *Id.*

The court held that the union’s stated position did not establish a statewide concern because these issues applied statewide only “when considered in the abstract.” *Id.* The courts are “‘especially’ hesitant to abdicate to the Legislature’s view of the issue ‘when the issue involves the division of power between local government and that same Legislature.’” *Id.* (citation omitted). Because the state law substantively infringed on a core, although un-enumerated, municipal affair, it could not be justified “merely by identifying some indirect effect on the regional and state economies.” *Id.* at 562. Laws setting forth generally applicable procedural standards are more likely to address a statewide concern, and impinge less on local authority, than substantive obligations. *Id.* at 564. The fact that the state law narrowly applied only to public agencies, and “impose[d] substantive obligations on charter cities, undermined the assertion that it presented a statewide concern. *Id.* at 564-65. As a result, the court held the state law did not address a statewide concern and affirmed the lower court’s judgment that the state law was unconstitutional as applied to charter cities. *Id.* at 566.

a. City’s Position

City compares the Housing Bills to Vista and argues that their generic reference to an affordable housing shortage as a matter of statewide concern is merely a convenient abstract label. There may be a lack of affordable housing in the state, but that fact does not sufficiently backstop the extra-municipal interest in directly targeting local jurisdictions’ control over local land use and

zoning. Furthermore, the Housing Bills' imposition of substantive duties and penalties and not procedural requirements – such as those previously imposed on charter cities requiring adoption of a general plan and reporting to HCD -- also weighs against State. Pet. Op. Br. at 17-18.

City argues that the state laws regarding land use and zoning in the coastal zone are an example of a proper limited extra-municipal concern sufficient to trump charter city autonomy because the coastal zone is a specific area over which State has a uniquely statewide interest. See §§ 65590, 65590.1. In CEED v. California Coastal Zone Conservation Committee, (“CEED”) (1974) 43 Cal. App. 3d 306, the court considered the former Coastal Zone Conservation Act of 1972 which imposed certain requirements on developments within the coastal zone. In determining that the act was applicable to charter cities, the court observed that the coastal zone is a “distinct and valuable natural resource belonging to all the people” and the coastline is uniquely subject to a statewide interest, citing the federal government’s recognition of the importance of the coastal zone as a national interest. *Id.* at 321-23. Pet. Op. Br. at 18.

In contrast, the Housing Bills impose substantive interruptions of local control over land use and zoning not based on features of a jurisdiction over which there is a statewide interest, but rather to all local jurisdictions. Yet, the demand for housing is not at all uniform throughout the state. The state lost 912,000 net domestic migrants since 2010, and the patterns are not equal in counties across the state. Since 2010, the Fresno and Sacramento labor markets respectively gained 41,000 and 48,000 domestic migrants, Riverside County gained 135,000 domestic migrants, Orange County lost 85,000 domestic migrants, and Los Angeles County lost 655,000 domestic migrants. Cox Decl., Ex A, p. 62. In other words, local population trends vary and present distinct local issues of housing supply and demand. Pet. Op. Br. at 18-19.

Because there is a multiplicity of different types of local jurisdictions (urban, rural, agricultural, industrial), local control over land use and zoning is necessary to meet local needs and concerns based on locally available resources and infrastructure. Sauviat Criste Decl., Ex. B, pp. 3-6 (comparing the varied local conditions that require local control). For instance, the parking requirements in single family residential zones should reflect the demographics of the city – Palm Springs with only two persons per household needs fewer additional parking spaces than Inidio with 3.4 persons per household. Sauviat Criste Ex. B, p. 6. Pet. Op. Br. at 19.

State cannot work backwards from its imposition of a purported statewide solution to a lack of affordable housing to justify its intrusion into inherently municipal affairs. The Legislature’s intention to address a statewide interest does not make it one. Johnson, supra, 4 Cal. 4th at 405 (“In other words, we must be satisfied that there are good reasons, grounded on statewide interests, to label a given matter a ‘statewide concern.’”) “No doubt almost anything [a city] does... can have consequences beyond its borders. But this circumstance does not mean this court may eviscerate clear constitutional provisions, or the Legislature may do what the Constitution expressly prohibits it from doing.” County of Riverside v. Superior Court, (2003) 30 Cal. 4th 278, 296. City concludes that the Housing Bills do not address a matter of statewide concern. Pet. Op. Br. at 19.

The court disagrees. State demonstrates that the affordable housing issue addressed in the Housing Bills is a matter of statewide concern, both in case law, legislative findings, and historical fact.

b. Historical Facts

Over the last several decades, California has produced 2.3 million fewer housing units than needed for its existing population. Coy Decl., Ex. A, pp. 3-5. The gap between the human population and the number of housing units is growing. *Ibid.* Housing prices, whether for sale or rental, are expensive all over the state. *Id.*, pp. 5-8. City's expert, Cox, agrees with that assessment. Cox. Decl., Ex. A, pp. 4-11. State argues that the cost of housing causes an array of physical and mental health, nutrition, education, and job performance problems. Coy Ex. A, pp. 15-23. Businesses have a hard time recruiting employees who cannot afford the cost of living and the state's overall economy is negatively impacted. *Id.*, pp. 20-21.) State Opp. at 24.

No city in California has an insular housing market. What happens in one city's housing market indisputably spills over city boundary lines and affects other cities. Coy Decl., Ex. A, pp. 8-13. Over the last 30 years, the median sales prices for existing homes in California, the Los Angeles Metro region (the counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura), and Orange County trace almost exactly the same jagged line. *Id.*, p. 10, Fig. 9. Even with charter city participation in the 2013-21 cycle of RHNA, State has achieved 55% of the goal for zoning for and building more housing for people at all income levels. *Id.*, p. 14. If charter cities opted out, the rate would be only 22%. *Ibid.* State Opp. at 24-25.

Intervenors note that there are 121 charter cities in California, including its 15 largest cities, and they house almost half the state's population. Wiener Decl. ¶28. SB 166 and SB 1333 address zoning practices which hinder affordable housing development by preventing developers from building at higher densities suited to the development of low-income housing. *See* Kotval Decl. ¶ 8, Ex. 6, pp. 15, 20. If charter cities are exempted from SB 166 and SB 1333, State's comprehensive statutory scheme to address the regional housing need under the Housing Element Law would devolve into two unequal, incompatible planning systems incapable of meeting the challenges posed by the housing crisis. Interv. Opp. at 8.¹⁵

Intervenors add that the concrete "regional spillover effects of insufficient housing" identified in *Anderson*, 42 Cal. App. 5th at 711, also demonstrate the need to address the shortage of affordable housing from a statewide approach. The lack of affordable housing in all cities impacts the surrounding regions, including by increasing housing demand and costs. *See* Wiener Decl., ¶32; Covarrubias Decl., ¶23; Creswell Decl., ¶19. For example, coastal cities often fail to plan for and produce the housing their communities need. Kotval Decl. ¶8, Ex. 6, pp. 12-13. The actions of coastal cities to block housing development leads to migration further inland, increasing housing demand and housing costs there. *Id.*, pp. 12-13, 15. Interv. Opp. at 19-20.

City's own evidence supports this spillover effect. Nearby Riverside County posted a

¹⁵ According to Intervenors, City's actions exemplify the local practices that result in the shortage of sites for affordable housing. Prior to the Amendment, City had a compliant housing element with sufficient sites to meet its RHNA allocation at all income levels. The Amendment reduced the density of development on these sites, required City approval of any development, and imposed onerous development standards. These changes effectively eliminated the sites available to meet City's lower income RHNA obligation and greatly impacted the development of affordable housing in the City. When the Amendment was in place from 2015 to 2020, City permitted no very low-income units and only eight low-income units. Kotval Decl. ¶15, Ex. 13, p. 4. In the two years prior to the Amendment, 89 very low and low-income units were permitted in the City. *Id.* Interv. Opp. at 19.

strong gain in domestic migration, while Orange County lost domestic migrants. Cox Decl., ¶6, Ex. A, p. 62. While City suggests that this domestic out-migration demonstrates a lower demand for housing in the region, its evidence shows that the out-migration has been associated with the lack of affordable housing. Cox Decl., ¶6, Ex. A, p. 62. City also recently approved a fair housing report stating that the “[l]ack of local or regional cooperation may be a significant contributing factor to fair housing issues in Orange County” and that “there remains a problem with local governments not taking the steps to achieve regionally determined goals like progress toward meeting each jurisdictions [sic] [RHNA] for very low-income and low-income households.” Kotval Decl., ¶16, Ex. 14, p. 324. Interv. Opp. at 20.¹⁶

c. Legislative Findings

In enacting SB 1333, the Legislature found as follows:

“The Legislature finds and declares that the serious shortage of decent, safe, and sanitary housing for low- and moderate-income households that was first identified in 1979 continues and that ensuring the location, development, approval, and access to housing for all income levels in all jurisdictions in California is a matter of statewide concern and not exclusively a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. This situation requires the amendment of the charter city exemptions provided in Sections 65700 and 65803 of the Government Code as inconsistent with Section 1 of Article IV and Section 5 of Article XI of the California Constitution.” City RJN Ex. P, §14 (emphasis added).

Intervenors note that the Legislature also declared that the lack of affordable housing is a matter of statewide concern in SB 166 and SB 133. Interv. Opp. at 16-17.

The author of SB 166 stated that it focuses on one of the biggest barriers to increasing affordable housing supply: a lack of appropriately zoned land for the construction of new housing in many localities. Interv. RJN Ex. 5, p.6. Consistent with the author’s statement, the Legislature declared in SB 166 that the No Net Loss Law is a reform to facilitate and expedite the construction of affordable housing. §§ 65582.1; 65582.1(i).

Similarly, the Legislature declared for SB 1333 that “the serious shortage of decent, safe, and sanitary housing for low- and moderate-income households that was first identified in 1979 continues,” and that it enacted SB 1333 “to address the lack of affordable housing in the state, which is of vital statewide importance, and that ensuring the location, development, approval, and access to housing for all income levels in all jurisdiction in the state is a matter of statewide concern. City RJN Ex. P, §§ 1, 14. According to the author, SB 1333 was necessary because the Kennedy Commission decision threatened to undermine California’s Housing Element Law and SB 1333 would ensure that charter cities do not inappropriately subvert the goals stated in required

¹⁶ Intervenors also attempt to rely on factual findings in Anderson to support the historical nature of statewide concern. Interv. Opp. at 19. The court may not take judicial notice of the truth of the findings in a court document. Sosinsky v. Grant, (1992) 6 Cal.App.4th 1548, 1551.

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general plan policies, including approved housing elements. Interv. RJN Ex. 6, pp. 3-4. Interv. Opp. at 18.¹⁷

State points out that the Housing Bills' amended/enacted statutes all concern low-cost housing or increasing housing generally. Sections 65852.150, 65852.25, 65863, 65863.4, 65863.6, 65866, and 65913.4 substantively address the statewide housing crisis as a matter of statewide concern. Sections 65852.150 (encouraging development of accessory dwelling units (granny flats), 65852.25 (preventing opportunistic downzoning in the wake of catastrophes), 65863 (also about downzoning), 65863.4 (same), 65863.6 (same), 65866 (concerning development agreements), and 65913.4 (establishing the streamlined, ministerial approval process of proposed multi-family housing developments that meet objective local standards) all establish obligations and programs that bolster the provision of housing, and low-cost housing, throughout the state. State Opp. at 28-29. Sections 65300.5, 65301.5, 65359, 65400, 65450, 65454, 65455, 65460.8, 65580, 655821.5, 65585, 65850, 65860, 65863.4, and 65863.8 govern administrative and procedural aspects of addressing the statewide housing crisis. State Opp. at 30.

Thus, the Legislature has repeatedly and expressly declared lack of adequate housing to be a matter of statewide concern. Buena Vista, *supra*, 175 Cal.App.3d at 306 (citing seven statutes). While the Legislature's characterization of statewide concern is not determinative, the applicable standard is one of "defer[ence] to legislative estimates regarding the significance of a given problem and the responsive measures that should be taken toward its resolution" Anderson, *supra*, 42 Cal.App.5th at 707 (citation omitted). State Opp. at 27-28.

d. Case Law

Over the past 50 years, numerous case decisions have upheld statewide housing and land-use statutes and regulations as overriding conflicting charter-city measures notwithstanding the home-rule doctrine. State Opp. at 25.

Last year, Anderson upheld the Surplus Land Act ("SLA") (§54220 *et seq.*) against a charter city's home-rule challenge. 42 Cal.App.5th at 683. The court held that the shortage of sites available for affordable housing development was a matter of statewide concern in the context of the charter city's challenge to the application of SLA section 54220, which required municipalities disposing of surplus land to give first priority to affordable housing development. The Anderson court held that the SLA advances state land use policy objectives by mandating a uniform approach to the disposition of local government land that is no longer needed for government use. By requiring municipalities to prioritize surplus land for the development of low- and moderate-income housing, the statute addresses the shortage of sites available for affordable housing development as a matter of statewide concern. 42 Cal.App.5th at 693.

The Anderson court found that while City had a readily identifiable interest in the

¹⁷ City notes that SB 166 did not apply to charter cities and the enactment of SB 1333, citing a purported "serious shortage of... housing for low- and moderate-income households that was first identified in 1979...", begs the question of what changed in the year between SB 166 and SB 1333? If the problem was not sufficiently of extra-municipal dimension for SB 166, the Legislature should not be able to reverse course a year later merely by fiat. Pet. Op. Br. at 19. The short answer is that the legislative history of SB 1333 shows that Kennedy Commission demonstrated to the Legislature that it had made a mistake.

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disposition of its real property, the well-documented shortage of sites for low and moderate income housing and the regional spillover effects of insufficient housing demonstrate extramunicipal concerns justifying statewide application of the Act's affordable housing priorities. Anderson, *supra*, 42 Cal.App.5th at 711. Judicial decisions have consistently recognized the statewide dimension of the affordable housing shortage in relation to various impositions by the state into the realm of local affairs. *Id.* at 709. Anderson quoted the California Supreme Court in California Building Industry Assn. v. City of San Jose, (2015) 61 Cal.5th 435, 441 as follows: "It will come as no surprise to anyone familiar with California's current housing market that the significant problems arising from a scarcity of affordable housing have [...] become more severe and have reached what might be described as epic proportions in many of the state's localities." *Id.* at 708-09.

Anderson relied on four appellate decisions issued over the last five and half decades holding unequivocally that the provision of sufficient housing for Californians is a matter of statewide concern:

"Judicial decisions predating California Building have recognized the statewide dimension of the affordable housing shortage in relation to various impositions by the state into the realm of local affairs. See Green v. Superior Court, (1974) 10 Cal.3d 616, 625...[citing "enormous transformation in the contemporary housing market, creating a scarcity of adequate low-cost housing in virtually every urban setting"]; Buena Vista [Gardens Apartments Assn. v. City of San Diego Planning Dept.], (1985) 175 Cal.App.3d 289, 306 [finding "need to provide adequate housing" is a statewide concern and rejecting home rule challenge to state provision that mandated charter city to include certain actionable components in its "housing element"]; Bruce v. City of Alameda, (1985) 166 Cal.App.3d 18, 22...["locally unrestricted development of low-cost housing is a matter of vital state concern"]; Coalition Advocating Legal Housing Options v. City of Santa Monica, (2001) 88 Cal.App.4th 451, 458...[noting the Legislature and courts have declared housing to be a matter of statewide concern]." 42 Cal.App.5th at 709-10.

The Anderson court concluded that "the well-documented shortage of sites for low- and moderate-income housing and the regional spillover effects of insufficient housing demonstrate 'extramunicipal concerns' justifying statewide application of the [SLA's] affordable housing priorities." *Id.* at 711. State Opp. at 25-26.

Intervenors also rely (Interv. Opp. at 16-17) on Buena Vista Gardens Apartments Ass'n. v. San Diego Planning Dep't, ("Buena Vista") (1985) 175 Cal.App.3d 289, 306-07, in which the court held that section 65583(c), which requires jurisdictions to commit to specific actions to make sites available to meet their RHNA, addressed a matter of statewide concern. The court rejected the city's argument that, while there is a legitimate statewide concern in requiring all jurisdictions to adopt general plans, section 65583(c) did not apply to charter cities because it intruded on municipal affairs. *Id.* The court explained that the city's position had no merit because it would limit the Legislature to declarations matters were of statewide concern and would prohibit the Legislature from compelling cities to take action to address the concern. *Id.* at 307.

Intervenors argue that City's position repeats the same argument rejected by Buena Vista.

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Intv. Opp. at 16. City contends that, while the state can require charter cities to adopt general plans and housing elements and to identify sites to facilitate affordable housing, State cannot enforce those requirements by mandating that the local planning and development decisions of charter cities be consistent with their adopted general plans and housing elements. *Id.* This is similar to Buena Vista, where the court expressly stated that the Legislature must be able to require local action for matters of statewide concern. Intv. Opp. at 17.

State notes that City's opening brief fails to mention Anderson or any of these cases affirming California's interest in addressing the statewide affordable-housing crisis through broadly applicable legislation. Even the case cited by City, CEEED, observed that "the municipal affairs concept does not preclude the state from regulating land use when necessary to further the state's interest." 43 Cal.App.3d at 324 (emphasis added). While City disparages those State policy goals as "abstract", the many cases discussed above prove otherwise. State Opp. at 26-27.

City argues that Anderson and Buena Vista do not justify the elimination of local control simply to address the lack of affordable housing. Neither case involved a state law that imposed substantive obligations on local land control.

In Anderson, the SLA provision was predominantly procedural with incidental and uncertain substantive effects. 42 Cal.App.5th at 714. The SLA does not require a local agency to sell surplus land for less than fair market value. §§ 54221(b)(3), 54226. The SLA also expressly recognizes the local agency's authority to enforce its pre-existing "authority or discretion to approve land use, zoning, or entitlement decisions in connection with the surplus land." §54223(b). In other words, the SLA does not override a charter city's land use and zoning decisions and preserves its ability to receive fair market value for surplus land. If the surplus land is not zoned for residential development, the city does not need to sell it for affordable housing development. If certain conditions attach to residential development under the city's land use and zoning rules, they need not be altered to facilitate affordable housing development (other than the minimum set-aside for residential development greater than ten units). Reply at 8-9.

In holding that the SLA passed the third part of the test, the Anderson court made sure to carefully determine whether "it treads within the boundary indicated by Vista for assessing statewide concern based on the degree to which the law impinges on local governing rights." 42 Cal. App. 5th at 712. The court noted that the SLA initially imposes procedural requirements for notice and good faith negotiations regarding the disposition of the surplus land. *Id.* at 713. It then noted that there are some substantive limitations which kick in if the land is slated for affordable housing or general housing greater than ten units. *Id.* The Anderson court emphasized, however, that the substantive requirements "arise only in select scenarios" while expressly preserving the right to fair market value. *Id.* Anderson held that the SLA's substantive requirements were attenuated and essentially incidental to the procedural requirements that were the main purpose of the law, and the substantive requirements still left substantial discretion to the city in deciding how and whether to dispose of surplus land. *Id.* at 714. Reply at 9.

City concludes that Anderson does not mean that State has carte blanche to eliminate local control when it purports to address a lack of affordable housing. Rather, Anderson stands for the proposition that the statewide interest in addressing the lack of affordable housing is sufficient to justify a predominantly procedural law with incidental and uncertain substantive effects, and which preserves substantial discretion to a charter city. None of these features apply to the Housing Bills. State has expressly conceded that sections 65852.150, 65252.25, 65863, 65863.4, 65863.6, 65866,

and 65913.4 impose substantive obligations/prohibitions. State Opp. at 28. There is nothing incidental or conditional to these substantive intrusions. The Housing Bills cut off charter city discretion completely and impose a State-mandated one-size-fits-all scheme for land use and zoning. Reply at 9-10.

City argues that Intervenor's reliance on Buena Vista, *supra*, 175 Cal. App. 3d at 289, is similarly misplaced. The Anderson court provides a helpful gloss: "In Buena Vista... the Housing Element Law required the city to adopt a five-year schedule of actions to achieve the housing element goals... but at the same time afforded 'considerable discretion in the manner of implementing programs' to reach those goals... and expressly refrained from imposing on certain aspects of local control...." 42 Ca. App. 5th at 714 (emphasis added). City argues that the Housing Bills afford no discretion – indeed, SB 35 literally imposes a streamlined, ministerial approval process for housing developments. Reply at 10.

Thus, the SLA provision in Anderson was predominantly procedural with incidental and uncertain substantive effects and the law in Buena Vista afforded considerable discretion in the manner of implementing programs to reach its goal. In contrast, the Housing Bills are substantially more intrusive and onerous. Reply at 9-10. The interest in low-cost housing may be sufficient to support a minimally intrusive procedural law, but it does not imbue the magic ability to justify a collection of Housing Bills that decimate charter city's home rule authority over local land use and zoning. Reply at 10-11.

While City has properly distinguished Anderson as concerning a primarily procedural state law and Buena Vista as affording charter cities with discretion, it fails to explain how the Housing Bills "decimate charter city's home rule authority over local land use and zoning". The Housing Bills are expressly designed to remedy the failure of California cities to comply with the Housing Element Law and RHNA zoning law (§65863) such that low-cost housing remains unavailable and a housing "crisis". This lack of low-cost housing is concededly a matter of statewide concern.

As explained by Buena Vista, *supra*, 175 Cal.App.3d at 306-07 and argued by Intervenor, the Legislature has to be able to address this matter of statewide concern and cannot be limited to making declarations about a housing crisis without compelling cities, including charter cities, to take action to address the concern. As Intervenor points out and City never addresses, there are 121 charter cities in California housing almost half the state's population. Wiener Decl. ¶28. If charter cities are exempted from SB 166 and SB 1333, the state's comprehensive statutory scheme to address the regional housing need under the Housing Element Law would devolve into two unequal, incompatible planning systems incapable of meeting the challenges posed by the housing crisis. Interv. Opp. at 8. City fails to even consider this point.

e. City's Abstract/Compartmentalization Argument

City concedes that the Housing Bills are intended to address the issue of insufficient low-cost housing. City argues that the Housing Bills still fail to qualify as a matter of statewide interest because the interest is too abstract to justify the elimination of local control. City notes that the Supreme Court in Vista held that there is not a statewide concern where the issues apply statewide only "when considered in the abstract." 54 Cal. 4th at 560. The "hinge of [the statewide concern issue] is the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations." *Id.* "In other words, for state law to control, there must be something more than an abstract state

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interest, as it is always possible to articulate some state interest in even the most local of matters.” Id. Pet. Op. Br. at 17; Reply at 5-6.

City contends that the issue of affordable housing is similarly abstract. The demand for housing is not uniform and varies greatly by area. Cox Decl., Ex. A, p. 62. A uniform, statewide approach is not justified and local control over land use and zoning is necessary to meet local needs and local concerns based on locally available resources and infrastructure. Criste Decl., Ex. B. As with the wage laws in Vista, the fact that the problem of low-cost housing can be aggregated and considered in the abstract is insufficient to make the matter an issue of statewide concern. Reply at 6-7.

City notes that Vista involved the application of a state prevailing wage law to a charter city’s public works projects. The Vista petitioner union argued that “the economy of the state has become more integrated... and wage levels in a local area are now more likely to have an effect regionally and statewide,” and “in light of our modern integrated economy, it has become a statewide concern.” 54 Cal. 4th at 561. The argument was rejected by the Vista court and City contends that State’s argument is the same if “wage levels” is replaced with “housing prices”. Reply at 6.

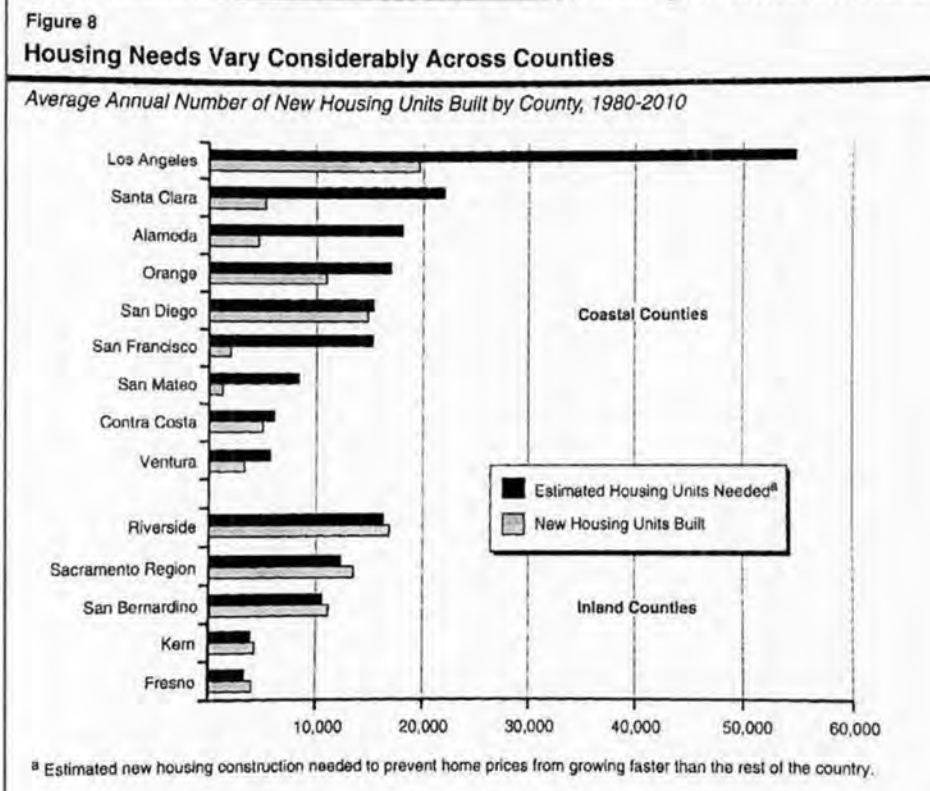
By failing to take account of the substantial difference in the intrusiveness of the Housing Bills versus the laws at issue in Anderson and Buena Vista, State and Intervenors have made the mistake of compartmentalizing “affordable housing” as a purported statewide concern. State and Intervenors rely on “de-contextualized snippets” of case law noting that lack of affordable housing is a statewide concern. Pursuant to their position, once a court has held that lack of affordable housing is a statewide concern sufficient to justify a particular state law’s supersession of local control, the floodgates are open to any and all future state law. The California Supreme Court has expressly cautioned against this oversimplification and compartmentalization of “an entire area of governmental activity as either a ‘municipal affair’ or one of statewide concern...” California Federal, *supra*, 54 Cal. 3d at 17-18. “To approach the dichotomy of “municipal affairs/statewide concern” as one signifying reciprocally exclusive and compartmented domains would, as one commentator has observed, “ultimately all but destroy municipal home rule.” Id. Reply at 7.

City suggests that State and Intervenors would be perfectly fine with the destruction of municipal home rule. But Article XI, section 5 is not a dead letter and is still a vital part of the California Constitution. Significantly missing from State’s and Intervenors’ discussions of the third part of the test is the fact that there is effectively a sliding scale based on the extent to which a state law substantively intrudes on charter cities’ local control over a municipal affair. Reply at 8.

The shortage of low-cost housing does not identify extramunicipal concerns sufficient to justify overriding local control. State’s own evidence underscores the fact that a one-size-fits-all, top-down mandated solution is inapt. “Place type – rural, suburban, and urban areas – each present their own unique housing challenges (even when located in the same geographical area) and can require different types of solutions.” No one disputes City expert Cox’s identification of highly variable domestic migration patterns, which reflect a lack of uniform demand for housing. While the state lost 912,000 domestic migrants since 2010, the patterns are not equal across the state. The Fresno and Sacramento labor markets actually gained 41,000 and 48,000 domestic migrants, Riverside County gained 135,000 net domestic migrants, Orange County lost 85,000 domestic migrants, and Los Angeles County lost 655,000 net domestic migrants. Cox Decl., Ex. A, p. 62.

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The Legislative Analyst Office issued a chart that shows striking dissimilarities in housing needs between inland and coastal counties, and even among the different coastal counties:



(Exhibit 3 at p. 22.) Reply at 7.

As with wage levels, it is not enough that there is an abstract problem of a lack of low-cost housing with a statewide dimension. “[T]hat the Legislature chose to deal with a problem on a statewide basis... does not in itself make the problem a statewide concern.... Put differently, the concept of statewide concern is not coextensive with the state’s police power.” *Vista, supra*, 54 Cal. 4th at 562. Reply at 7.

It is true that *Vista* teaches that a statute is more likely to be of statewide concern and impinge less on local authority if it is procedural, not substantive, in nature and is narrowly applied only to public agencies. 54 Cal.4th at 564. Where the state law substantively infringes on a core municipal affair, it cannot be justified “merely by identifying some indirect effect on the regional and state economies.” *Id.* at 562.

The Housing Bills may be summarized as follows. SB 35 provides for a streamlined ministerial approval process which bypasses the discretionary CUP process for developments with below market-rate units that are consistent with the city’s objective zoning and design review standards. SB 35 also imposes a time deadline for city disapproval. SB 166 and SB 1333 collectively impose a no net loss requirement for low-cost housing on charter cities. A charter city will violate the No Net Loss Law if it approves the downsizing of a site identified in its housing element as available for development at greater density, or approves a development of market-rate housing units on a site identified as available for lower-income housing. AB 101 is a statutory enforcement scheme where a city is not substantially in compliance with the Housing Element Law

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and RHNA zoning law.

The Housing Bills are narrowly applied only to charter cities, and therefore meet that piece of Vista. 54 Cal.4th at 564-65. However, they have substantive elements as well as procedural ones. As a result, the court should look closely at the Housing Bills substantive impacts. There are multiple problems with City's argument that the demonstrated lack of low-cost housing is too abstract and wrongly compartmentalized as a statewide concern.

First, City fails to identify the specific substantive elements of the Housing Bills. City merely generally contends that SB 35 commandeers its city's discretionary land use authority over where and how housing construction takes place within its boundaries and that SB 1333 represents a tectonic shift in the separation of powers and unconstitutionally treads on charter cities' traditional control over local land use and zoning. This general discussion is insufficient for a serious analysis of the substantive provisions and their infringement on charter city home rule. City has not established that the Housing Bills necessarily will eliminate local discretion in making land use and planning decisions.

Second, City focuses on the purportedly abstract statewide interest in low-cost housing without considering the purpose of the Housing Bills. SB 166 was passed because cities which had adopted housing elements with site inventories that accommodated their lower-income RHNA were succumbing to neighborhood pressure to reduce site density and hinder low-cost housing development. SB 1333 was passed because Kennedy Commission showed that the Legislature inadvertently left charter cities – which make up half the state's population – out of SB 166. SB 35 serves a similar purpose of compelling all cities to follow a ministerial approval process for developments with low-cost housing that are consistent with objective zoning and design review, again taking the neighborhood pressure out of the equation. AB 101 was passed to provide teeth for these statutes. Thus, the Housing Bills addressed a problem that all cities, general and charter, were not complying with statutory law designed to significantly increase the amount of low-cost housing. As such, this case is more like Buena Vista, which held that section 65583(c), which requires jurisdictions to commit to specific actions to make sites available to meet their RHNA, applied to charter cities because the Legislature may compel charter cities to take action to address a statewide concern. 175 Cal.App.3d at 307.

Third, contrary to City's assertions, the evidence shows that the issue of low-cost housing, unlike the wage laws at issue in Vista, is sufficiently concrete to qualify as a matter of statewide concern. City is correct that the demand for housing is not uniform and varies greatly by area, and local control over land use and zoning is necessary to meet local needs and local concerns based on locally available resources and infrastructure. But these facts do not exclude statewide control of low-cost housing issues. No city in California has an insular housing market and what happens in one city's housing market indisputably spills over city boundary lines and affects other cities. Coy Decl., Ex. A, pp. 8-13. Over the last 30 years, the median sales prices for existing homes in California trace almost exactly the same jagged line. Id., p. 10, Fig. 9. There is a regional spillover effect for affordable housing wherein decisions by local municipalities affect the issue of housing in the state as a whole. Coy Decl., Ex. 1, pp. 8-13; Wiener Decl., ¶32; Covarrubias Decl., ¶23; Creswell Decl., ¶19.

Fourth, City overstates its position in contending that the Housing Bills seek to provide “[a] uniform, statewide approach” of control over land use and zoning and a one-size-fits-all, top-down mandated solution that fails to consider different county housing needs and construction.

The Housing Bills concern a specific issue -- low-cost housing, not housing in general. They do not purport to regulate a charter city's zoning at all and only impose limitations on discretionary CUPs for low-cost housing.

State and Intervenors have demonstrated that, based on case law, legislative declarations, and historical facts context, the lack of affordable housing addressed in the Housing Bills is a matter of statewide concern.

4. Whether the Housing Bills are Reasonably Related and Narrowly Tailored

If the state law is not reasonably related to a matter of statewide concern, it cannot prevail over the conflicting city measure. *Vista, supra*, 54 Cal.4th at 556. If the state law is reasonably related to addressing a matter of statewide concern, but it unnecessarily interferes with local control, then the state law still cannot prevail over the city measure. *Id.* Only where the state law both is reasonably related to a matter of statewide concern and does not unnecessarily interfere with local control will the state law prevail. *Id.* A state law passes this test if it legitimately addresses the matter of statewide concern and does not thwart local control. *Huntington Beach, supra*, 44 Cal.App.5th at 278-79.

State notes that the two dozen state statutes at issue in the Housing Bills easily pass the reasonable relationship prong. All the statutes make it simpler for housing developments to get built by removing obstacles to the development. Therefore, they reasonably relate—indeed, directly address—the statewide issue of insufficient affordable housing. State Opp. at 31. City does not address this issue, which is waived.

City makes two arguments that the Housing Bills are not narrowly tailored to avoid unnecessarily interfering with local control. First, they are overbroad, and this overbreadth demonstrates their Trojan horse nature because their effect is to eliminate local control in favor of a uniform statewide system of land use and zoning without any allowance for uniquely local issues, concerns, or problems with proposed development. Pet. Op. Br. at 20.

City's argument – that the Housing Bills are the camel's nose under the tent and State will attempt to regulate all land use and zoning – is pure speculation. As City has pointed out, neither State nor the court can compartmentalize an issue of statewide concern to justify all statutes in that subject area that affect municipal affairs. The court must evaluate each new statute issue on its own merits. Moreover, City has not specified which statutes in the Housing Bills are overbroad or why they are so. When a party asserts a point but fails to support it with reasoned argument and citation to authority, the point may be treated as waived. *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784, 85; *Solomont v. Polk Development Co.*, (1966) 245 Cal.App.2d 488 (point made which lacks supporting authority or argument may be deemed without foundation and rejected). The Housing Bills are reasonably related to the statewide concern of providing low-cost housing.

Second, City argues that the Housing Bills are not narrowly tailored because they are fundamentally unfit to address the issue of low-cost housing. Pet. Op. Br. at 20; Reply at 11. The fundamental issue driving the shortage of affordable housing is the lack of sufficient funding. *Id.* Housing Bills' imposition of RHNA compliance on charter cities is a quixotic endeavor that is fundamentally not fit to meet the purported statewide concern of inadequate production of affordable housing. Pet. Op. Br. at 20.

City notes that the fundamental issue for low-cost housing production is the lack of

funding. The Legislative Analyst's Office has estimated \$15-30 billion annually necessary to meet affordable housing needs and Governor Newsom has proposed only 1.75 billion. Cox Decl., Ex. A, pp. 7-8. According to the UCLA Lewis Center for Regional Policy studies, "[t]o say that there isn't enough public subsidy to build all the income-restricted housing that the state deems necessary is a wild understatement." *Id.* Through 2018, only 9% of RHNA allocations at the very low-income category, and only 13% of RHNA allocations at the low-income category, have been issued permits. Cox Ex. A, p. 13. In other words, cities have planned for affordable housing, but developers have not been developing. The RHNA process in effect requires cities "to plan for more than 10 times the amount of subsidized housing that can be funded." Cox Ex. A, p. 13. As a result, it is no surprise that 95% of jurisdictions are subject to SB 35's draconian streamlined ministerial permit processing requirement.¹⁸ Pet. Op. Br. at 20.

City contends that it is particularly unfit for low-cost housing production because transit access to lower income jobs is constrained. Cox Ex. A, pp. 51-54. The No Net Loss provisions of SB 166 and SB 1333 exponentially increase the impact on local control by requiring parcels to be set aside for RHNA allocations that have no reasonable prospect of being built, burdening charter cities' ability to manage development and growth in a manner that meets local needs. Pet. Op. Br. at 20-21.

City argues that the growing disconnect between asserted need and production of affordable housing is a result of State's prior attempts to dilute local control – dissolution of Redevelopment Agencies ("RDAs"). As the U.S. Department of Housing and Urban Development observed, RDAs created 63,600 new affordable housing units and 44 percent of new housing units constructed by RDAs from 2011 to 2008 were affordable at the very low-income level. Gates Decl., Ex. K, p. 4. Before their dissolution, RDAs were an important source of gap funding for federal affordable housing development funds and "a longstanding and heavily-used source of funding for affordable housing in California..." Gates Decl., Ex. L, p. 3. Pet. Op. Br. at 21.

City argues that it is contrary to the principles of charter city home rule to impose a draconian uniform statewide solution, including massive financial penalties, that cannot work and which can only serve to leave charter cities perpetually unable to meet local needs with local control. State should not be permitted to take advantage of a problem it exacerbated by dissolving RDAs in order to impose statewide land use and zoning. Narrow tailoring requires the minimal intrusion necessary and the Housing Bills all but guarantee maximum interference with local control. Pet. Op. Br. at 21-22.

City's arguments that the Housing Bills are not narrowly tailored because they will not achieve success in providing low-cost housing, and that the State never should have ended CRAs which did have success, are unavailing. City may be correct that the State's goal of providing sufficient low-cost housing cannot be achieved without a source of funding, but that does not mean that the Housing Bills' housing element and RHNA requirements are not a necessary first step.

¹⁸ City notes that its rate of permitting housing development outpaced every Orange County city other than Irvine and was greater than California as a whole. Cox Ex. A, p. 18-19. Although funding for market-rate housing has been sufficient to meet Orange County's needs and permits for very low and low-income housing in Orange County have outpaced the state overall, less than a quarter of RHNA allocations in those affordable housing categories have been issued. Cox Ex. A, pp. 24-25 (Fig. 5-12). Pet. Op. Br. at 20.

City's complaint about the now long-gone CRAs is irrelevant. CRAs were dissolved because they had their own problems of local abuse.

The Housing Bills are tailored to apply only to charter cities, and State demonstrates that each of the statutes does not unnecessarily interfere with or thwart local control. The Housing Bills' procedural statutes -- sections 65300.5, 65301.5, 65359, 65400, 65450, 65454, 65455, 65460.8, 65850, and 65860 -- are a mere administrative inconvenience, similar to those with which charter cities already have had to comply in this area of public policy and law. State Opp. at 31.

SB 166 is tailored to narrowly address its specific purpose—to prevent the loss of sites cities have identified as available for low-cost housing, while leaving the cities with significant discretion over the implementation of this obligation. Under SB 166, a city is compelled to identify a new site only when it approves reduced density or different development on a site identified in its housing element as an affordable housing site. §65863(b)-(c). Cities have full discretion over which sites they select. *Id.*; 65583(a)(3); Creswell Decl., ¶10. While SB 166 requires cities to maintain the sites they previously identified for low-cost housing development, the cities may choose to replace those sites so long as they can show sufficient alternate site capacity to meet their RHNA allocation or they identify a replacement site within 180 days. §65863(b)-(c). Interv. Opp. at 20-21.

SB 1333 amended sections 65300.5, 65301.5, 65359, 65450, 65454, 65455, 65460.8, 65700, 65852.150, 65852.25, 65860, 65863, 65863.4, 65863.6, 65863.8, 65866, 65867.5, and 65869.5 to expressly apply many housing-development statutes to charter cities. SB 1333 is appropriately tailored to ensure the consistent statewide application of the statutory scheme established to address the affordable housing shortage. It does so by making expressly applicable to charter cities those requirements needed to ensure that cities comply with their obligations related to housing element planning to ensure a uniform and comprehensive approach to the statewide lack of affordable housing. Those requirements include taking no action that is inconsistent with a general plan, housing element, specific plan (§65454), or zoning ordinance (§65860), as well as the No Net Loss Law's requirement of taking no action that is inconsistent with the obligation to maintain sites available at all times to meet the RHNA (§ 65863). SB 1333 is narrowly tailored to avoid unnecessarily interfering with local control.¹⁹ Interv. Opp. at 21.²⁰

¹⁹ Although the original version of SB 1333 would have made all of the Government Code's local planning laws and zoning regulations laws applicable to charter cities, the Legislature addressed opponents' concerns and narrowed the bill's scope to cover only those portions of the laws necessary to the goals of requiring consistency and enforcing no net loss zoning. *See, e.g.*, Assembly, Senate Third Reading, Analysis of Sen. Bill No. 1333 (2017-2018 Reg. Sess.), Aug. 17, 2018, p. 3 ("Opponents argue that this bill goes too far and believe that the author's goal [...] can be achieved without broadly applying all of the planning and zoning statutes to charter cities"); Assembly, Senate Third Reading Analysis, Analysis of Sen. Bill No. 1333 (2017-2018 Reg. Sess.), Aug. 24, 2018, pp. 3-4 (noting adoption of narrowing recommendation). State Opp. at 31-32.

²⁰ State explains the individual statutes amended or enacted by SB 35 and SB 1333. Sections 65300.5, 65582.1 (SB 35), and 65450 do not requires a charter city to do or not to do anything. State Opp. at 32. Sections 65301.5 and 65867.5 have minimal practical impact on a charter city. State Opp. at 32-33. Section 65852.25 prevents a city from taking advantage of a catastrophic event to downzone a site, and its numerous exceptions provide appropriate tailoring,

City replies that both State and Intervenors simply repeat the purposes of specific statutes in the Housing Bills and ask the court to accept that they are narrowly tailored, *ipse dixit*. The lack of affordable housing production is not driven by a lack of sufficient planned and zoned sites, but rather the lack of sufficient funding. Narrow tailoring requires State to ensure that the law at issue treads only so far as necessary to address the matter of statewide concern. Yet, the Housing Bills could not have been designed better to permanently interfere with local governance. City concludes that the Housing Bills amount to a *de facto* rescission of article XI, section 5. There will be no longer any meaningful distinction between general law cities and charter cities if the Legislature can simply impose an abstract statewide purpose for a law. Reply at 11.

The court does not agree. It is clear that the Housing Bills, and the statutes they amend or implement, are reasonably related to address the issue of insufficient housing. City does not raise any specific argument to dispute State's assertions that each of the implicated statutes is designed to address the issue of low-cost housing. City also fails to argue or establish with sufficient specificity that the Housing Bills are not narrowly tailored such that they unconstitutionally eliminate local control. City's argument that funding is the primary issue behind the lack of low-cost housing merely focuses on a probable lack of success and does not mean that the Housing Bills are not narrowly tailored. In contrast to City's generalized claims of overbreadth, State and Intervenors persuasively argue that the specific statutes amended or adopted in the Housing Bills are narrowly tailored because they permit local discretion to the extent feasible. State Opp. at 33-34; Interv. Opp. at 20.

The Housing Bills are reasonably related to the issue of statewide concern for insufficient low-cost housing and are narrowly tailored to address the issue.

G. Conclusion

The petition for writ of mandate is denied. The declaratory relief claim is granted. A

avoiding unduly interfering with local control over rebuilding decisions. State Opp. at 33. Section 65852.150 encourages construction of ADUs, merely invites charter cities to share in ADU policy choices, and does not thwart local control. State Opp. at 33. Section 65863 *et seq.* is an anti-downzoning scheme containing numerous exceptions and thereby avoids unnecessarily interfering with local control over rebuilding decisions. State Opp. at 33-34. Section 65863.4's mandate against downzoning is limited and the city retains discretion. State Opp. at 34. Section 65863.6 affords a city broad discretion to consider and to address the needs of the city's residents, as well as the local economic and environmental resources that would be impacted by the zoning decision. State Opp. at 34. Section 65863.8 affords a city discretion with respect to whether the change in use may be approved, evidencing an incursion only so intrusive as necessary to accomplish its goal. State Opp. at 34. Changes to the Development Agreements Law (§65864 *et seq.*) do not intrude on a city's discretion whether or not to enter a development agreement or the structure of the agreement. State Opp. at 35. Section 65913.4 (SB 35) streamlines the approval process for multi-family housing development. Although the statute intrudes upon local control, it applies in only limited circumstances. Cities that are making housing development approval decisions in good faith face no compulsion under this statute, making it narrowly tailored. State Opp. at 35-36.

declaration shall issue that the Housing Bills do not violate the municipal affairs doctrine of the California Constitution and may be enforced.

State's counsel is ordered to prepare a proposed judgment, serve it on the other counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for February 18, 2021 9:30 a.m.

01/29/2021

EXHIBIT 2

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***NO FEE PURSUANT TO
GOVERNMENT CODE § 6103***

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

01/25/2019 at 10:24:20 AM
Clerk of the Superior Court
By Mary M Johnson, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CENTRAL JUSTICE CENTER

**California Department of Housing and
Community Development,**

Petitioner and Plaintiff,

v.

**City of Huntington Beach; City Council of
Huntington Beach; and Does 1-50,**

Respondents and
Defendants.

Case No. 30-2019-01046493-CU-JR-CJC

Judge Sheila Fell

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

INTRODUCTION

1. California’s housing crisis has reached historic proportions. 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,” and the housing that *does* exist is the most expensive in the country. (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

1 opportunities for workers and businesses, worsening poverty and homelessness, and undermining
2 the state’s environmental and climate objectives.” (*Id.*, subd. (a)(2)(A).)

3 2. The failure of local governments to plan for the necessary housing supply has been a
4 key factor contributing to this crisis. To overcome this failure, the Legislature for years has
5 required local governments to include housing elements in their general plans. These housing
6 elements must, among other things, ensure that adequate housing is available to meet each
7 region’s housing needs for Californians of all income levels, including low and very low incomes.
8 Not all local governments have complied with this requirement. Respondent/Defendant the City
9 of Huntington Beach is one such city.

10 3. Petitioner/Plaintiff Department of Housing and Community Development (HCD)
11 brings this action against the City of Huntington Beach and the City Council of Huntington Beach
12 (collectively, the “City”) to remedy this violation. It requests that the Court issue a writ ordering
13 the City to bring its housing element into compliance with State law, and issue a declaration that
14 the City has abrogated its planning obligations.

15 **PARTIES**

16 4. HCD is a public agency of the State of California. (Gov. Code, § 12804.) Among
17 other things, HCD is responsible for developing housing policy and building codes, for regulating
18 manufactured homes and mobile home parks, and for enforcing state housing laws—including
19 laws regarding housing elements—in a manner that meaningfully and positively impacts the
20 provision of housing in all communities across the State.

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

23 6. The City Council of Huntington Beach is the elected governing body of the City of
24 Huntington Beach. It is the legislative body charged under Government Code section 65300 with
25 responsibility for adopting a general plan, including a housing element, for the physical
26 development of the City of Huntington Beach.

27 7. HCD is unaware of the true names and capacities of respondents and defendants
28 DOES 1 through 50 (the “Doe Respondents”), who are therefore sued by fictitious names

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

5 **VENUE AND JURISDICTION**

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

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

10 **BACKGROUND AND FACTUAL ALLEGATIONS**

11 **Housing Elements and the Planning Process**

12 10. The Legislature has declared that “[t]he availability of housing is of vital statewide
13 importance, and the early attainment of decent housing and a suitable living environment for
14 every Californian . . . is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)
15 California law requires that all local governments adequately plan to meet the housing needs of
16 everyone in the community, at all economic levels.

17 11. To meet this requirement, every city and county must adopt and periodically update a
18 housing element as part of its general plan. (See Gov. Code, §§ 65302, subd. (c), 65580, *et seq.*)
19 The law mandating this adoption and periodic update is known as “Housing Element Law.” (*Id.*,
20 § 65580, *et seq.*) California’s Housing Element Law acknowledges that, for the private market to
21 adequately address the housing needs and demand of Californians, local governments must adopt
22 plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing
23 development, especially for a locality’s lower-income households and workforce. As a result,
24 housing policy in California rests largely on the effective implementation of the housing element
25 contained in the local general plan.

26 12. The housing element is a roadmap for housing development in a given community.
27 The housing element must identify and analyze existing and projected housing needs, and must
28 include “a statement of goals, policies, quantified objectives, financial resources, and scheduled

1 programs for the preservation, improvement, and development of housing.” (Gov. Code,
2 § 65583.) The housing element must also “identify adequate sites for housing” and “make
3 adequate provision for the existing and projected needs of all economic segments of the
4 community.” (*Ibid.*) Each housing element is also subject to review by HCD, as discussed
5 below.

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

10 14. The process of updating a housing element begins with HCD’s determination of a
11 Regional Housing Need Allocation (RHNA) for the region for a given planning period. (Gov.
12 Code, § 65584, subd. (a)(1).) The RHNA is segmented by income levels. To arrive at the
13 RHNA, HCD starts with demographic population information from the California Department of
14 Finance and uses a formula to calculate a figure for each region’s planning body, known as a
15 “council of governments” (COG). Each COG also uses its own demographic figures to calculate
16 the regional housing need. Each COG coordinates with HCD to arrive at a final figure, taking
17 into account factors not captured in the calculations. This final figure is the RHNA. (See *id.*,
18 § 65584.01.)

19 15. Once the RHNA is set, the COG is responsible for allocating the housing need among
20 all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each local
21 government must then prepare a housing element that, among other things, identifies adequate
22 sites to accommodate that jurisdiction’s fair share of the RHNA at each income level. (*Id.*,
23 §§ 65583, 65583.2.) Sites must be suitable for residential development and must be made
24 available during the planning period. (*Id.*, § 65583.2, subd. (a).) If a sufficient quantity of
25 adequate sites is not currently available, the housing element must commit to identifying and
26 rezoning additional sites within three years from the date of adoption. (*Id.*, §§ 65583, subd.
27 (c)(1), 65583.2, subd. (h).) The housing element must also accommodate any unmet portion of
28 the RHNA from the prior planning period. (*Id.*, § 65584.09, subd. (a).)

1 16. Each housing element must also evaluate governmental constraints on the
2 development of housing for all income levels, and must show local efforts to remove
3 governmental constraints that impede the local government’s ability to meet its share of the
4 RHNA. (Gov. Code, § 65583, subd. (a)(5).)

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

11 18. Under Chapter 370, Statutes of 2017 (“AB 72”), codified at Government Code
12 section 65585, subdivisions (i) and (j), HCD has authority to review any action or failure to act by
13 a local government that it determines is inconsistent with an adopted housing element or section
14 65583 of California’s Housing Element Law. This includes failure to implement program actions
15 included in the housing element. HCD may revoke housing element compliance if the local
16 government’s actions do not comply with state law.

17 19. AB 72 also authorizes HCD to notify the Office of the Attorney General of California
18 that the local jurisdiction is in violation of state law for noncompliance with, among other things,
19 California’s Housing Element Law.

20 20. Pursuant to Government Code section 65585, subdivision (i)(1)(A), HCD may take
21 any of the actions authorized by AB 72 after issuing written findings to the local government “as
22 to whether the action or failure to act substantially complies with [California’s Housing Element
23 Law],” and providing a reasonable time, no longer than 30 days, for the local government to
24 respond. (Gov. Code, § 65585, subd. (i)(1)(A).) HCD has satisfied this requirement here, and
25 has issued letters to the City dated June 23, 2015, and November 14, 2018, both of which noted
26 the City’s failure to comply with Housing Element Law. The City’s response to the
27 November 14, 2018 letter is discussed below.

28

1 **The Huntington Beach Housing Element and**
2 **The Beach and Edinger Corridors Specific Plan**

3 21. The City’s current planning period runs from 2013 to 2021. In 2013, the City
4 submitted a draft housing element for this planning period to HCD for review. HCD found that
5 the draft met the statutory requirements of California’s Housing Element Law.

6 22. The City adopted the housing element on September 16, 2013 (the “2013 Housing
7 Element”), and HCD then reviewed it. On November 12, 2013, HCD found that the adopted
8 2013 Housing Element was in substantial compliance with California’s Housing Element Law.

9 23. The compliance finding was based on the identification of sufficient housing
10 development capacity to meet the City’s RHNA, and effective programs to facilitate development
11 of housing affordable to lower-income households. Notably, the housing element’s inventory of
12 sites and programs relied heavily on capacity within the Beach and Edinger Corridors Specific
13 Plan (BECSP). In fact, the housing allocation necessary to meet the needs of the City’s lower-
14 income households and workforce was entirely accounted for on sites within the BECSP.

15 24. On May 4, 2015, however, the City adopted amendments to the BECSP that changed
16 the maximum number of allowable units in the BECSP to an amount less than the City’s
17 remaining RHNA. The adoption of these amendments fundamentally altered the inventory of
18 available sites, constituting a *de facto* change to the 2013 Housing Element’s available sites
19 calculation. The BECSP amendments changed development standards, reducing unit density by
20 requiring additional parking and restricting development flexibility by requiring a conditional use
21 permit. These actions posed constraints to the development of housing, particularly on sites
22 identified in the land inventory to meet the City’s remaining lower-income housing need.

23 25. On June 23, 2015, HCD sent the City a letter notifying the City that the amendments
24 to the BECSP changed the premises upon which HCD’s prior certification of the 2013 Housing
25 Element was based, thereby nullifying that prior certification.

26 26. HCD also explained in its June 23, 2015 letter that a housing element must be
27 amended when a local government decision changes substantive provisions of the housing
28 element upon which HCD relied in determining substantial compliance. Housing element drafts

1 and amendments must be submitted to HCD for review and commentary before formal adoption.
2 HCD therefore advised the City to immediately submit an amended housing element to HCD to
3 review for compliance with California’s Housing Element Law.

4 27. Shortly after HCD’s June 23, 2015 letter, the City began working in consultation with
5 HCD to prepare an amended and legally compliant housing element.

6 28. On July 31, 2015, while the City was working with HCD to amend the 2013 Housing
7 Element, the City was sued by affordable housing advocates and two individual plaintiffs who
8 argued that the BECSP Amendment was invalid due to its inconsistency with the 2013 Housing
9 Element. (See *The Kennedy Commission v. City of Huntington Beach*, Case No. 30-2015-
10 00801675, currently pending in the Superior Court of the State of California, County of Los
11 Angeles (hereinafter, “*Kennedy*”).) In its defense against the lawsuit, the City vigorously argued
12 that it was “actively working to amend its housing element to meet its RHNA goals.” (*Id.*, City’s
13 Opposition to Petition for Writ of Mandate, filed Oct. 29, 2015, at p. 1.) The City affirmatively
14 represented to the Court that it had held hearings, consulted with HCD and others, and submitted
15 a draft amendment to HCD. (*Ibid.*) The City also told the Court that, as a result of this
16 interactive process, the lawsuit was unnecessary and would soon be moot. (*Ibid.*) According to
17 the City, “[t]he Court may simply observe that the City is moving quickly to fulfill its statutory
18 obligations and withhold writ relief pending the City’s adoption of a new housing element.” (*Id.*,
19 at p. 12.)¹

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23 ¹ On January 20, 2016, the Superior Court in *Kennedy* issued a writ of mandate
24 commanding the City to cease enforcing, administering, or implementing the BECSP amendment.
The Court stated that Government Code section 65454 required the BECSP to be consistent with
the City’s general plan. The City immediately appealed.

25 On May 26, 2016, the Court of Appeal issued an order staying the writ of mandate. On
26 October 31, 2017, the Court of Appeal reversed the Superior Court and remanded the matter on
the basis that charter cities are exempt from the consistency requirement of Government Code
section 65454, and the consistency requirement did not apply since the City never affirmatively
adopted it. (*The Kennedy Com. v. City of Huntington Beach* (2017) 16 Cal.App.5th 841, 851-59.)

27 The Court of Appeal denied the petitioners’ request for rehearing on November 20, 2017,
28 and the California Supreme Court denied the petitioners’ petition for review on January 17, 2018.
The case is now proceeding on remand to the Superior Court.

1 29. On January 29, 2016, HCD found that the draft amendment prepared by the City
2 would satisfy the requirements of California’s Housing Element Law when adopted and
3 submitted to HCD.

4 30. Despite the fact that HCD had found the draft amendment to be legally compliant,
5 despite every indication from the City to HCD that it was actively working to bring the housing
6 element into compliance, and despite the City’s numerous representations to the *Kennedy* Court
7 to the same effect, the City council voted unanimously to reject the amendment—General Plan
8 Amendment No. 15-001—at a March 7, 2016 hearing. Until that time, HCD had every reason to
9 believe, based on the City’s interactions with HCD staff and its representations to the Court, that
10 the City intended to adopt the amendment.

11 31. On November 14, 2018, HCD issued a notice of noncompliance in which it found that
12 the City’s housing element remained out of compliance with article 10.6 of Government Code
13 title 7, division 1, chapter 3 (“Article 10.6”); that the City failed to act in compliance with
14 Government Code section 65583 when it failed to approve an amended housing element; and that
15 the City violated Article 10.6 by failing to take action to bring the housing element into
16 compliance with applicable statutory requirements since the City Council’s vote on March 7,
17 2016.

18 32. On December 6, 2018, the City sent HCD a letter responding to the November 14,
19 2018 notice of noncompliance. The City did not commit to complying with its legal duty to
20 immediately bring the 2013 Housing Element back into substantial compliance. The City instead
21 proposed further delay, stating that it “will set forth a plan to obtain recertification from HCD”
22 only after the *Kennedy* lawsuit is resolved. The time for empty promises has come to an end.
23 The City should not be allowed to avoid its statutory obligations any longer.

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FIRST CAUSE OF ACTION

Writ of Mandate (Code Civ. Proc., § 1085)

[Against All Defendants]

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4 33. HCD incorporates by reference each and every allegation of the preceding
5 paragraphs.

6 34. Under California’s Housing Element Law, the City must ensure that its general plan
7 contains a legally compliant housing element.

8 35. The City has completely abdicated this duty. Based on the events alleged in
9 paragraphs 10 through 32 above, the City’s 2013 Housing Element violates Housing Element
10 Law, and the City has failed to enact an amendment bringing the 2013 Housing Element into
11 substantial compliance. Indeed, by refusing to adopt General Plan Amendment No. 15-001 on
12 March 7, 2016, and by, on information and belief, making no meaningful effort since then to draft
13 and adopt another amendment that would bring the 2013 Housing Element into substantial
14 compliance, the City has publicly and unequivocally violated its duty to comply with California
15 law.

16 36. These actions and failures to act by the City are arbitrary, capricious, entirely lacking
17 in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, an
18 abuse of discretion, and a failure to act as required by law.

19 37. Accordingly, a writ of mandate should issue ordering the City to bring the 2013
20 Housing Element into substantial compliance with California’s Housing Element Law (Gov.
21 Code, § 65580, *et seq.*) and to ensure that the 2013 Housing Element meets the City’s regional
22 housing needs goals by the end of the 2013 – 2021 planning period, as determined by HCD.

23 38. HCD has a beneficial interest in the issuance of such a writ, given its authority and
24 mandate to enforce substantial compliance with California’s Housing Element Law. Likewise,
25 the public at large, as well as the lower income residents and workforce in the City, have a
26 significant interest in ensuring that the City complies with the law.

27 39. HCD has exhausted all required administrative remedies, or is excused from
28 exhausting its remedies due to the futility of pursuing such remedies, among other things.

1 40. HCD has no plain, speedy, or adequate remedy in the ordinary course of law. The
2 only remedy provided by law for HCD to obtain relief is this Petition for Writ of Mandate
3 pursuant to Code of Civil Procedure section 1085.

4 **SECOND CAUSE OF ACTION**

5 **Declaratory Relief (Code Civ. Proc., § 1060)**

6 **[Against All Defendants]**

7 41. HCD incorporates by reference each and every allegation of the preceding
8 paragraphs.

9 42. There is a controversy between HCD and the City as to whether the 2013 Housing
10 Element substantially complies with California’s Housing Element Law (Gov. Code, § 65580, *et*
11 *seq.*). Based on the events alleged in paragraphs 10 through 32 above, HCD believes that the
12 2013 Housing Element does not substantially comply. Further, based on information and belief,
13 the events alleged in paragraphs 10 through 32, and the administrative record herein, HCD alleges
14 that the City is aware that 2013 Housing Element does not substantially comply and has failed to
15 take any meaningful action to substantially comply.

16 43. It is necessary and appropriate for the Court to render a declaratory judgment that sets
17 forth the parties’ legal rights and obligations with respect to whether the 2013 Housing Element
18 substantially complies with California’s Housing Element Law. Among other things, such a
19 judgment would inform the parties’ conduct in connection with future contemplated amendments
20 to the City’s housing element, including those that occur routinely at the beginning of each
21 housing cycle.

22 44. HCD therefore requests a declaration that the 2013 Housing Element does not
23 substantially comply with California’s Housing Element Law (Gov. Code, § 65580, *et seq.*).

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PRAYER FOR RELIEF

WHEREFORE, HCD prays as follows:

1. For a writ of mandate ordering the City to bring the 2013 Housing Element into substantial compliance with California’s Housing Element Law (Gov. Code, § 65580, *et seq.*) and to ensure that the 2013 Housing Element meets the City’s regional housing needs goals by the end of the 2013 – 2021 planning period, as determined by HCD.
2. For a declaration that the City’s 2013 Housing Element does not substantially comply with California’s Housing Element Law (Gov. Code, § 65580, *et seq.*).
3. For costs and attorneys’ fees.
4. For any other relief the Court may deem appropriate.

Dated: January 25, 2019

Respectfully Submitted,

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**NO FEE PURSUANT TO
GOVERNMENT CODE § 6103**

Superior Court of California
County of Los Angeles

03/25/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: J. De Luna Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

**California Department of Housing and
Community Development,**

Petitioner and Plaintiff,

v.

**City of Huntington Beach; City Council of
Huntington Beach; and Does 1-50,**

Respondents and
Defendants.

Case No. 30-2019-01046493

STIPULATION OF DISMISSAL

Dept: 85
Judge: The Honorable James C.
Chalfant

Trial Date: Not Set
Action Filed: January 25, 2019

Electronically Received 03/25/2020 09:19 AM

1 Petitioner and Plaintiff California Department of Housing and Community Development
2 (“HCD”), and Respondents and Defendants City of Huntington Beach and City Council of
3 Huntington Beach (collectively, the “City”), through their respective attorneys of record, hereby
4 stipulate and agree as follows:

5 HCD filed this case on January 25, 2019. In its Petition and Complaint (“Petition”), HCD
6 alleges that the City has failed to bring its 2013 housing element into substantial compliance with
7 California housing element law, and HCD seeks, among other things, a writ of mandate ordering
8 the City to bring the 2013 housing element into substantial compliance. The City demurred to the
9 Petition, and the Court overruled the demurrer on August 8, 2019. The City filed its Answer to
10 the Petition on September 9, 2019, denying the allegations in the Petition.

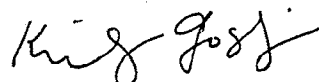
11 On February 3, 2020, after working with HCD, the City adopted an amended housing
12 element. The City maintains that it brought its housing element into compliance to receive HCD
13 certification in order to make the City eligible for receipt of State issued SB 2 funds. On
14 March 24, 2020, HCD certified that the amended housing element substantially complies with
15 California housing element law. As a result, HCD and the City have agreed and hereby stipulate
16 as follows:

- 17 1. HCD’s claims against the City shall be dismissed without prejudice; and
18 2. Each party to this stipulation shall bear its own attorneys’ fees and costs.

19
20 Dated: March 25, 2020

Respectfully Submitted,


21 XAVIER BECERRA
22 Attorney General of California
23 JAMEE JORDAN PATTERSON
24 Supervising Deputy Attorney General

25 

26 KIMBERLY R. GOSLING
27 Deputy Attorney General
28 *Attorneys for Petitioner and Plaintiff
Department of Housing and Community
Development*

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Dated: 3/25, 2020


for MICHAEL GATES
City Attorney
*Attorneys for Respondents and Defendants
City of Huntington Beach and City Council
of Huntington Beach*

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ORDER

Good cause appearing, the Court hereby ORDERS as follows:

1. HCD’s claims against the City of Huntington Beach and City Council of Huntington Beach (collectively, the “City”), are hereby dismissed without prejudice; and
2. HCD and the City shall each bear its own attorneys’ fees and costs.

IT IS SO ORDERED.

Dated: 03/25/2020, 2020



James C. Chalfant / Judge

Honorable James C. Chalfant
Judge of the Superior Court

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **California Department of Housing and Community Dev. v. City of Huntington Beach; City Counsel of Huntington Beach; and Does 1-50**
Case No.: **30-2019-01046493-CU-JR-CJC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 25, 2020, I served the attached:

STIPULATION OF DISMISSAL

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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Michael J. Vigliotta
Daniel S. Cha
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City Attorney Office
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Huntington Beach, CA 92648
***Attorneys for: Respondents and Defendants,
City of Huntington Beach & City Council of
Huntington Beach***

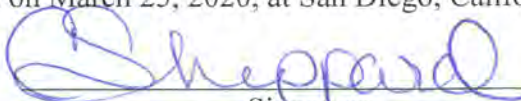
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 25, 2020, at San Diego, California.

C. Sheppard
Declarant



Signature

SD2018102333
72211243.docx

EXHIBIT 3

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*Exempt from Filing Fees
Government Code § 6103*

9 *Attorneys for Petitioner and Plaintiff, The People of*
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,
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Petitioners and Plaintiffs,

v.

THE CITY OF HUNTINGTON BEACH, A
MUNICIPAL CORPORATION; CITY
COUNCIL OF HUNTINGTON BEACH;
AL ZELINKA, in his official capacity as
CITY MANAGER OF HUNTINGTON
BEACH; AND DOES 1-50, INCLUSIVE,
Respondents and Defendants.

30-2023-01312235-CU-WM-CJC
Assigned for All Purposes
Case No. Judge Erick L. Larsh
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

INTRODUCTION

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

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

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

24 4. In another effort to alleviate the housing crisis, the Legislature has repeatedly
25 amended the housing laws to encourage, and streamline the approval of, permits for accessory
26 dwelling units (“ADUs”) throughout the state. (See generally, Gov. Code, §§ 65852.150,
27 65852.2, 65852.22.) These units are typically small, easily-constructed residential structures
28 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.

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

12 **PARTIES**

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

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

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

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

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

27 17. The People are unaware of the true names and capacities of respondents and
28 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.](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

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

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

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

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

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

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

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

24 **FIRST CAUSE OF ACTION**
25 **Writ of Mandate (Code Civ. Proc., § 1085; Gov. Code, § 65585, subd. (n)) – Violation of**
26 **Gov. Code, §§ 65852.2 (ADU), 65852.21, 66411.7 (SB 9)**
27 **[Against All Defendants]**

28 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.
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SECOND CAUSE OF ACTION
Declaratory and Injunctive Relief (Code Civ. Proc., § 1060; Gov. Code, § 65585, subd. (n)) –
Violation of Gov. Code, § 66300 (Housing Crisis Act of 2019)
[Against All Defendants]

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

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

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

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

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

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

84. There is a controversy between Petitioners and the City as to whether the City’s ban on SB 9 projects complies with the Housing Accountability Act. As alleged, Petitioners believe 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))

- 1 6. For monetary fines imposed by statute, in an amount as the court shall deem proper
- 2 under the Housing Accountability Act and any other state laws. (Gov. Code, § 65585,
- 3 subd. (n).)
- 4 7. For costs and attorneys' fees.
- 5 8. For any other relief the Court may deem appropriate.

7 Dated: March 8, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
DANIEL A. OLIVAS
Senior Assistant Attorney General
DAVID PAI
Supervising Deputy Attorney General



THOMAS P. KINZINGER
Deputy Attorney General
*Attorneys for Petitioner and Plaintiff, The
People of California ex rel. Rob Bonta,
and the California Department of Housing
and Community Development*

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EXHIBIT 4

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*Exempt from Filing Fees
Government Code § 6103*

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

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ORANGE

14
15 **THE PEOPLE OF CALIFORNIA EX REL.**
16 **ROB BONTA, AND THE CALIFORNIA**
17 **DEPARTMENT OF HOUSING AND**
18 **COMMUNITY DEVELOPMENT,**

19 Petitioners and Plaintiffs,

20 v.

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

27 Respondents and Defendants.

Case No. 30-2023-01312235-CU-WM-CJC

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE AMENDED
PETITION AND COMPLAINT**

(Code Civ. Proc., §§ 473, subd. (a)(1); 576.)

Date: June 8, 2023
Time: 1:30 p.m.
Dept: C20
Judge: The Hon. Erick Larsh
Trial Date: None set
Action Filed: March 8, 2023

28 PLEASE TAKE NOTICE THAT on June 8, 2023, at 1:30 p.m., or as soon as the Court
schedules, in Department C20 of the Superior Court of California for the County of Orange,
located at 700 Civic Center Drive West, Santa Ana, CA 92701, Petitioners and Plaintiffs the

1 People of California ex rel. Rob Bonta, Attorney General, and the California Department of
 2 Housing and Community Development (“HCD”), will and hereby do move the Court for an order
 3 permitting the filing of an Amended Petition and Complaint for Declaratory and Injunctive
 4 Relief. A copy of the proposed amended pleading is attached as Exhibit A to the Declaration of
 5 Thomas P. Kinzinger, filed concurrently herewith in support of this motion.

6 The proposed amendments will amend the first cause of action seeking a writ of mandate to
 7 order the City of Huntington Beach to comply with California’s Housing Element Law by
 8 adopting a complaint housing element within 120 days. The proposed amendment will also
 9 include additional factual allegations that occurred after this action commenced, and revise the
 10 second cause of action, seeking declaratory and injunctive relief. Finally, the proposed
 11 amendment will strike the third cause of action as moot.

12 Pursuant to California Rule of Court 3.1324(a), the allegations to be deleted from the
 13 original Petition and Complaint are as follows:

Page (in Original)	Paragraph (in Original)	Line Number (in Original)
3 – 4	7 – 11	Page 3, line 12 – Page 4, line 11
7 – 9	29 – 35	Page 7, line 15 – Page 9, line 19
13 – 15	53 – 67	Page 13, line 25 – Page 15, line 23
16	69 – 75	1 – 20
17	79 – 82	1 - 18
17 – 18	83 – 87	Page 17, line 19 – Page 18, line 9
18	Prayer for Relief, 1 – 6	Page 18, line 12 – Page 19, line 3

1 Pursuant to California Rule of Court 3.1324(a), the allegations to be added to the amended
 2 Petition and Complaint are as follows:

3 Page (in Amended)	Paragraph (in Amended)	Line Number (in Amended)
4 2	3	19 – 23
5 3	7, 8	12 – 23
6 4	17	25 – 27
7 7	27	4 – 12
8 11	42 – 45	4 – 26
9 12 – 14	49 – 65	Page 12, line 14 – Page 14, line 20
11 14 – 15	67 – 70	Page 14, line 26 – Page 15, line 11
13 15 – 17	74 – 80	Page 15, line 21 – Page 17, line 2
15 17	Prayer for Relief, 1 – 5	5 – 16

16
 17 In addition, there are some minor alterations to the language of allegations present in both
 18 the original and amended Petition and Complaint that do not otherwise change the substance of
 19 the Petition and Complaint.

20 This motion will be made on the grounds that granting Petitioners leave to amend is in the
 21 interest of justice and of judicial efficiency, as the proposed amendments are related to the
 22 operative Notices of Violations and existing controversies giving rise to the originally-filed
 23 petition and complaint, and will not result in prejudicing Respondents/Defendants. Allowing the
 24 amendment would therefore promote the efficient resolution of all claims between the parties.

25 Petitioners/Plaintiffs also request an order that the attached proposed amended pleading be
 26 deemed to be the amended pleading, and that the filing date of the amended pleading be deemed
 27 to be the same date this motion is granted.

28

1 This motion is based on this notice, the Memorandum of Points and Authorities and the
2 Declaration of Thomas P. Kinzinger, along with attached exhibits, all of which are filed
3 concurrently with and in support of this motion, the files and records in this action, and any
4 further evidence and argument that the Court may receive at or before the hearing.

5
6 Dated: April 10, 2023

Respectfully submitted,

7 ROB BONTA
8 Attorney General of California
9 DANIEL A. OLIVAS
10 Senior Assistant Attorney General
11 DAVID PAI
12 Supervising Deputy Attorney General



13 THOMAS P. KINZINGER
14 Deputy Attorney General
15 *Attorneys for Petitioner and Plaintiff, The
16 People of California ex rel. Rob Bonta,
17 and the California Department of Housing
18 and Community Development*

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*Exempt from Filing Fees
Government Code § 6103*

9 *Attorneys for Petitioners and Plaintiffs, The People
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11 Department of Housing and Community
Development*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE

14
15 **THE PEOPLE OF CALIFORNIA EX REL.
16 ROB BONTA, AND THE CALIFORNIA
17 DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT,**

18 Petitioners and Plaintiffs,

19 v.

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

24 Respondents and Defendants.
25

Case No. 30-2023-01312235-CU-WM-CJC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR LEAVE TO FILE
AMENDED PETITION AND
COMPLAINT**

(Code Civ. Proc., §§ 473, subd. (a)(1); 576.)

Date: June 8, 2023
Time: 1:30 p.m.
Dept: C20
Judge: The Hon. Erick Larsh
Trial Date: None set
Action Filed: March 8, 2023

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28

INTRODUCTION

Petitioners and Complainants, the People of the State of California, by and through Attorney General Rob Bonta, and the Department of Housing and Community Development (“HCD”), seek leave to file an Amended Petition and Complaint for Declaratory and Injunctive Relief. The proposed amendments add a violation of the state’s Housing Element Law, conforming with recent developments that have ripened such a claim, and strikes claims and allegations that are, at the moment, moot. It also amends Petitioners’ declaratory relief cause of action to allege that Respondents/Defendants City of Huntington Beach, its City Council, and its City Manager (collectively, the “City”)’s recent actions, taken after this action commenced, were intended to evade judicial review.

The core of these proposed amendments—mainly, to include a Housing Element Law violation—do not deviate from the myriad of Notices of Violation that prompted this action. Nor are there any applicable statute of limitations concerns that would preclude Petitioners from amending the pleadings, because the Housing Element violation and allegations of evading review only ripened *after* the commencement of this action.

This action commenced on March 8, 2023. The need to amend was discovered on the evening of April 4, 2023, when the City Council continued to refuse to adopt an updated housing element for the current 2021 through 2029 (aka “sixth cycle”) planning period. The City Council’s action occurred *after* HCD offered the City two meetings to resolve the Housing Element Law violations. By refusing to adopt the draft housing element after those two meetings, the Housing Element Law violations ripened.

The proposed amendment will not delay any briefing schedule or trial date, yet to be set, and, thus, causes no prejudice to the City. Should leave to amend be denied, Petitioners would have to needlessly file a separate action involving the same Notices of Violations giving rise to this present action, and subsequently file a notice of related case. Granting this motion, therefore, promotes judicial efficiency and permits the parties to expeditiously adjudicate all violations for which the City was given notice.

BACKGROUND

1
2 This action commenced on March 8, 2023, after Petitioners issued multiple violation
3 notices, from January 9, 2023 to February 22, 2023, regarding the City Council’s actions to defy
4 and violate state housing laws. (See ROA #2: Petition and Complaint, ¶¶ 59-64.) To wit, violation
5 notices were issued because the City Council prohibited certain types of residential building
6 permit applications authorized under state law, such as accessory dwelling units (“ADUs”), and
7 banned streamlined applications for lot splits and duplex development under Senate Bill 9 (“SB 9
8 applications”). (*Ibid.*) Such constraints also violated the state’s Housing Element Law, which the
9 City had yet to comply with, but was moving forward towards updating. (See Exh. A attached to
10 Kinzinger Decl., ¶¶ 53-64.)

11 The statutory deadline for the City to adopt a sixth cycle housing element, for the planning
12 period covering October 2021 through October 2029, was October 15, 2021. (See Exh. A
13 attached to Kinzinger Decl., ¶ 53.) The City’s planning staff previously worked with HCD to
14 develop a compliant draft housing element for the sixth cycle. (See Exh. A attached to Kinzinger
15 Decl., ¶¶ 54.) On September 30, 2022, HCD, advised the City that its September 23, 2022 draft
16 housing element met statutory requirements at the time of review. (*Ibid.*)

17 HCD met with City representatives on March 8, 2023, to discuss the City’s violation of the
18 Housing Element Law, and again, on March 24, 2023. (See Exh. A attached to Kinzinger Decl.,
19 ¶¶ 60, 62.) At those meetings, discussion topics included minor changes to the sites inventory of
20 the City’s housing element, adjustments to ADU projections, and the expectation—later
21 downgraded to hope—that the City Council would adopt its draft housing element at its April 4,
22 2023 meeting. (See Exh. A attached to Kinzinger Decl., ¶¶ 60, 62.)

23 On March 27, 2023, the parties’ counsel met and conferred regarding whether the City
24 Council’s March 21, 2023 action to “accept applications and process permits for ADUs and SB 9
25 development projects,” yet not formally rescind the prior action item to ban such projects, was
26 sufficient to moot the existing causes of action. (Kinzinger Decl., ¶ 3.) On March 30, 2023, the
27 City’s counsel was informed that should the City Council not adopt its draft housing element,
28

1 Petitioners would amend their petition/complaint to include a Housing Element Law violation.
2 (*Ibid.*)

3 On April 3, 2023, the City filed and served an answer to the existing petition/complaint.
4 (Kinzinger Decl., ¶ 4.) One day later, on April 4, 2023, the City Council refused to approve its
5 draft housing element. (*Id.* at ¶ 5.) On April 7, 2023, Petitioners, through their counsel, requested
6 the City stipulate to the filing of the proposed amended petition and complaint. (*Id.* at ¶ 7, Exh. B
7 attached to Kinzinger Decl.) The City’s counsel refused. (*Ibid.*)

8 DISCUSSION

9 I. JUDICIAL POLICY ALLOWS PLEADINGS TO BE LIBERALLY AMENDED

10 Judicial policy favors resolution of all disputed matters between the parties in the same
11 lawsuit, and thus, the court’s discretion to permit amendment of the pleadings are exercised
12 liberally. (See *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; *Morgan v. Sup. Ct. (Morgan)*
13 (1959) 172 Cal. App. 2d 527, 530 [holding that it would be error and an abuse of discretion to
14 refuse to allow a party to amend a pleading if granting such motion would not prejudice the
15 opposing party].) Leave to amend, therefore, should be granted here because it will not cause any
16 meaningful prejudice or delay to the responding party, and would promote judicial efficiency in
17 resolving the parties’ dispute in a single action.

18 II. THE PROPOSED AMENDMENTS ARE TIMELY RAISED TO INCLUDE RECENTLY RIPENED 19 CLAIMS AND STRIKE CLAIMS THAT ARE, AT THE MOMENT, MOOT

20 “If the motion to amend is timely made and the granting of the motion will not prejudice
21 the opposing party, it is error to refuse permission to amend and where the refusal also results in a
22 party being deprived of the right to assert a meritorious cause of action or a meritorious defense,
23 it is not only error but an abuse of discretion.” (*Morgan, supra*, 172 Cal. App. 2d at 530.)

24 The proposed amendment adds allegations of Housing Element Law violations, and
25 Petitioners seek leave to do so only after it became abundantly apparent that such a claim was
26 ripe; i.e., the City Council will not be adopting a draft housing element that would cure the
27 deficiencies previously raised by Petitioners in the violation notices. (See also Gov. Code, §
28 65585, subd. (k) [requiring HCD to offer two meetings to discuss Housing Element Law

1 violations prior to seeking judicial remedies].) As the Housing Element Law violations are
2 ongoing and not barred under any statute of limitations, Petitioners amended claims are timely
3 raised. (See Gov. Code, § 65585, subd. (p) [applying the three-year limitations period under Code
4 of Civil Procedure section 338, subdivision (a) to violations brought under this section by HCD or
5 the Attorney General].)

6 Moreover, the proposed amendment strikes the third cause of action, which, at the moment,
7 appears to be moot. And it includes additional allegations, pertinent to the second cause of action,
8 regarding actions the City took in an attempt to evade judicial review regarding existing claims
9 that remain ripe. The amended petition, therefore, would promote judicial efficiency by updating
10 the pleadings to include new but pertinent factual allegations that occurred after this action
11 commenced, and streamlining the pleadings into two causes of action.

12 **III. THE PROPOSED AMENDMENTS ARE TIMELY, AND WILL NOT PREJUDICE DELAY TO**
13 **THE CITY**

14 Absent a showing of actual prejudice, the timing of a proposed amendment to a petition is
15 not a ground to deny leave to amend. (*Higgins v. Del Faro* (1981) 123 Cal. App. 3d 558, 564-
16 565.) Here, amending the petition and complaint less than 30 days from the date this action
17 commenced, and less than a week after the City Council’s actions giving rise to the amended
18 claim, will not cause any prejudicial delay to the City. No merits hearing date have been set, no
19 briefing schedule needs to be revised, and the City is afforded the requisite time it needs to
20 respond to or challenge the sufficiency of the amended pleadings pursuant to the Code of Civil
21 Procedure.

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CONCLUSION

For the foregoing reasons, Petitioners respectfully requests this Court grant this motion leave to file the Amended Petition and Complaint for Declaratory and Injunctive Relief, to be deemed filed and served as of the date of this hearing.

Dated: April 10, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
DANIEL A. OLIVAS
Senior Assistant Attorney General
DAVID PAI
Supervising Deputy Attorney General



THOMAS P. KINZINGER
Deputy Attorney General
Attorneys for Petitioner and Plaintiff, The People of California ex rel. Rob Bonta, and the California Department of Housing and Community Development

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*Exempt from Filing Fees
Government Code § 6103*

9 *Attorneys for Petitioners and Plaintiffs, The People
10 of California ex rel. Rob Bonta, and the California
11 Department of Housing and Community
Development*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE

14
15 **THE PEOPLE OF CALIFORNIA EX REL.
16 ROB BONTA, AND THE CALIFORNIA
17 DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT,**
18
19 **v.**
20 **THE CITY OF HUNTINGTON BEACH, A
21 MUNICIPAL CORPORATION; CITY
22 COUNCIL OF HUNTINGTON BEACH;
AL ZELINKA, in his official capacity as
23 CITY MANAGER OF HUNTINGTON
24 BEACH; AND DOES 1-50, INCLUSIVE,**
25
26
27
28 Respondents and Defendants.

Case No. 30-2023-01312235-CU-WM-CJC

**DECLARATION OF THOMAS P.
KINZINGER IN SUPPORT OF MOTION
FOR LEAVE TO FILE AMENDED
PETITION AND COMPLAINT**

(Code Civ. Proc., §§ 473, subd. (a)(1); 576.)

Date: June 8, 2023
Time: 1:30 p.m.
Dept: C20
Judge: The Hon. Erick Larsh
Trial Date: None set
Action Filed: March 8, 2023

1 I, Thomas P. Kinzinger, declare as follows:

2 1. I am an attorney at law licensed to practice before all courts of the State of California.
3 I am a Deputy Attorney General and am counsel of record for petitioners and plaintiffs the People
4 of California, ex rel. Rob Bonta, Attorney General, and the California Department of Housing and
5 Community Development (“HCD”) (collectively, “Petitioners”). I have personal knowledge of
6 the following facts. If called upon to testify as a witness, I could and would testify competently to
7 these facts under oath.

8 2. The proposed Amended Petition and Complaint for Declaratory and Injunctive relief
9 amends Petitioners’ first cause of action to allege a Housing Element Law violation, adds
10 additional factual allegations pertinent to the second cause of action, and strikes the third cause of
11 action. A true and correct copy of the proposed amended pleading is attached as Exhibit A.

12 3. On March 27, 2023, the parties’ counsel met and conferred regarding whether
13 Respondent/Defendant City of Huntington Beach’s City Council’s March 21, 2023 action to
14 “accept applications and process permits for ADUs and SB 9 development projects,” yet not
15 formally rescind the prior action item to ban such projects, was sufficient to moot the existing
16 causes of action. On March 30, 2023, the City Attorney was informed by the Attorney General’s
17 Office that should the City Council not adopt its draft housing element, Petitioners would amend
18 their petition/complaint to include a Housing Element Law violation.

19 4. On April 3, 2023, I received by email a copy of the City’s answer to the existing
20 petition/complaint, purportedly filed that same day.

21 5. One day later, on April 4, 2023, the City Council refused to approve its draft housing
22 element. The City Council’s meeting was live-streamed and recorded online, which I observed
23 online that evening and have subsequently replayed.

24 6. Thus, the need to amend the pleading to add a Housing Element Law violation did not
25 ripen until April 4, 2023, after the City Council failed to adopt its draft housing element for the
26 sixth cycle planning period. The proposed amendments also include pertinent factual allegations
27 that occurred after this action commenced on March 8, 2023.

28

1 7. On April 7, 2023, my office emailed a request to the City Attorney to stipulate to the
2 filing of the proposed amended petition and complaint. The City Attorney refused. A true and
3 correct copy of that email string is attached as Exhibit B.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct and that this declaration was executed on April 10, 2023, at Los
6 Angeles, California.

7 

8 _____
Thomas P. Kinzinger

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EXHIBIT A

1 ROB BONTA
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*Exempt from Filing Fees
Government Code § 6103*

9 *Attorneys for Petitioner and Plaintiff, The People of*
10 *California ex rel. Rob Bonta, and the California*
11 *Department of Housing and Community*
Development

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE

14
15 **THE PEOPLE OF CALIFORNIA EX REL.**
16 **ROB BONTA, AND THE CALIFORNIA**
17 **DEPARTMENT OF HOUSING AND**
18 **COMMUNITY DEVELOPMENT,**

Case No. 30-2023-01312235-CU-WM-CJC

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

Petitioners and Plaintiffs,

19 v.

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

Respondents and Defendants.

25 **INTRODUCTION**

26 1. Californians continue to suffer under a housing affordability crisis. As the Legislature
27 has found, “[t]he lack of housing . . . is a critical problem that threatens the economic,
28 environmental, and social quality of life in California.” (Gov. Code, § 65589.5, subd. (a)(1)(A),

1 (B.) This crisis is “hurting millions of Californians, robbing future generations of the chance to
2 call California home, stifling economic opportunities for workers and businesses, worsening
3 poverty and homelessness, and undermining the state’s environmental and climate objectives.”

4 (*Id.*, subd. (a)(2)(A).)

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

11 3. Local governments that do not prepare a housing element substantially in compliance
12 with state law, thereby failing to plan for an adequate supply of housing at all income levels,
13 become subject to various legal consequences. For example, a local agency that fails to adopt a
14 substantially compliant housing element becomes subject to the so-called “Builder’s Remedy”
15 provision of the Housing Accountability Act. (Gov. Code, § 65589.5) A local agency without a
16 substantially compliant housing element may not deny, or apply conditions that make infeasible, a
17 housing development project for very low-, low-, or moderate-income households on the basis of
18 inconsistency with a zoning ordinance and land use designation in any general plan element.
19 (Gov. Code, § 65589.5, subd. (d)(5).) In addition, a local government that fails to adopt a
20 compliant housing element by the statutory deadline is subject to legal challenge pursuant to
21 Article 14 of the Housing Element Law. (See Gov. Code. § 65750 et seq.) Article 14 provides for,
22 among other things, temporary relief in the form of a revocation of permitting authority until the
23 legal challenge is concluded. (Gov. Code, § 65757.)

24 4. In another effort to alleviate the housing crisis, the Legislature has repeatedly
25 amended the housing laws to encourage, and streamline the approval of, permits for accessory
26 dwelling units (“ADUs”) throughout the state. (See generally, Gov. Code, §§ 65852.150,
27 65852.2, 65852.22.) These units are typically small, easily-constructed residential structures
28 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 recently 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 did this despite the
10 fact that the availability of decent, suitable, and affordable housing is of vital statewide
11 importance to all Californians.

12 7. In addition, the City of Huntington Beach has not adopted a current housing element
13 that is substantially in compliance with state law. In failing to adopt *any* housing element, much
14 less a substantially compliant one, Huntington Beach is not only in violation of state law, it is also
15 now subject to the Builder’s Remedy.

16 8. The People of the State of California, by and through Attorney General Rob Bonta,
17 and the Department of Housing and Community Development (“HCD”), bring this action against
18 the City of Huntington Beach, its City Council, and its City Manager (collectively, the “City”) to
19 remedy its violations of state law. The People and HCD request that this Court issue a writ
20 ordering the City to adopt a legally-compliant housing element within 120 days, pursuant to
21 Government Code section 65754, subd. (a). Further, the People and HCD request this court issue
22 a judgment declaring that the City is noncompliant with the Housing Element Law and that it
23 must comply with the ADU laws and SB 9.

24 **PARTIES**

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

The Housing Crisis

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

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

20. Recently, the Legislature stated plainly that “California has a housing supply and affordability crisis of historic proportions.” (Gov. Code, § 65589.5, subd. (a)(2)(A).) “The consequences of failing to effectively and aggressively confront this crisis are 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.” (*Ibid.*)

Housing Elements and the Planning Process

21. 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.)

22. 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.

1 23. The housing element is a roadmap for housing development in a given community.
2 The housing element must identify and analyze existing and projected housing needs, and must
3 include “a statement of goals, policies, quantified objectives, financial resources, and scheduled
4 programs for the preservation, improvement, and development of housing.” (Gov. Code,
5 § 65583.) The housing element must also “identify adequate sites for housing” and “make
6 adequate provision for the existing and projected needs of all economic segments of the
7 community.” (*Ibid.*) Each housing element is also subject to review by HCD.

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

12 25. The process of updating a housing element begins with HCD’s determination of a
13 Regional Housing Need Allocation (“RHNA”) for the region for a given planning period. (Gov.
14 Code, § 65584, subd. (a)(1).) The RHNA sets goals for housing affordable to various income
15 levels. To arrive at the RHNA, HCD starts with demographic population information from the
16 California Department of Finance and uses a formula to calculate a figure for each region’s
17 planning body, known as a “council of governments” (“COG”). Each COG (in this case, the
18 Southern California Association of Governments) also uses its own demographic figures to
19 calculate the regional housing need. Each COG coordinates with HCD to arrive at a final figure,
20 taking into account factors not captured in the calculations. This final figure is the RHNA. (See
21 *id.*, § 65584.01.) Once the RHNA is set, the COG is responsible for allocating the housing need
22 among all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each
23 local government must then prepare a housing element that identifies adequate sites to
24 accommodate that jurisdiction’s fair share of the RHNA at each income level. (*Id.*, §§ 65583,
25 65583.2.)

26 26. Each local government must submit its draft housing element to HCD before
27 adoption. (Gov. Code, § 65585, subd. (b)(1).) HCD must review the draft element and issue
28 findings as to whether the draft substantially complies with the Housing Element Law. (*Id.*,

1 subs. (b)(3), (d).) After adopting the final housing element, the local government must again
2 submit the element to HCD, and HCD must again review and report its findings to the local
3 government. (*Id.*, subs. (g), (h).)

4 27. A local government that fails to adopt a compliant housing element by the statutory
5 deadline is subject to legal challenge pursuant to Article 14 of the Housing Element Law. (Gov.
6 Code. § 65750 et seq.) Article 14 authorizes a court to issue various remedies, including ordering
7 a local government to adopt a compliant housing element within 120 days, ordering the
8 suspension of a local government’s permitting authority until it adopts a compliant housing
9 element, and even ordering a *temporary* suspension of a local government’s permitting authority
10 until a housing element challenge is concluded. (Gov. Code, §§ 65754, 65755, 65757.) In
11 addition, localities that do not have compliant housing elements are automatically subject to the
12 Builder’s Remedy under the Housing Accountability Act. (Gov. Code, § 65589.5.)

13 **The ADU Laws**

14 28. One effective means of increasing the housing supply is by removing regulatory
15 barriers to accessory dwelling units, or ADUs. ADUs are sometimes also known as “granny
16 flats,” “in-law units,” “backyard cottages,” or “secondary units,” among other names. These small
17 structures provide a cost-effective solution to increasing the housing supply on a rapid timescale.

18 29. ADUs have many benefits. They are affordable to construct, since they typically use
19 comparatively inexpensive wood frame construction, and no new land acquisition or major
20 infrastructure is required. ADUs can also provide a source of income for homeowners when
21 rented, increasing incentives for homeowners to build ADUs on their property. In addition, ADUs
22 enable extended families to reside close to one another, and for seniors to age in place with family
23 members while maintaining an independent living space. (See generally, Accessory Dwelling
24 Units, Department of Housing and Community Development, available at
25 [https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units.](https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units))

26 30. In recent years, the Legislature has repeatedly amended the housing laws to legalize
27 and promote the construction of accessory dwelling units. In 2018, as part of a package of updates
28 to the housing laws that, among other things, made the ADU laws applicable to charter cities for

1 the first time, the Legislature found and declared all of the following:

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

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

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

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

10 (5) California faces a severe housing crisis.

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

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

17 (8) Accessory dwelling units are, therefore, an essential component of California’s
18 housing supply.

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

20 31. The bulk of the ADU laws are set forth at Government Code section 65850 et seq.
21 These laws broadly restrict the ability of local agencies, whether general law or charter cities, to
22 deny ADU projects within their jurisdiction, and set tight deadlines for processing applications.

23 32. Relevant to this litigation, Government Code section 65852.2, subdivisions (a)(3)(A)
24 and (b)(1), require permitting agencies to approve or deny ADU applications ministerially and
25 without discretionary review within 60 days of a complete application’s submittal. Under both
26 provisions, “[i]f the local agency has not approved or denied the completed application within 60
27 days, [an] application shall be deemed approved.” In addition, Government Code section 65852.2,
28 subdivision (e)(1), states “a local agency shall ministerially approve an application for a building

1 permit within a residential or mixed-use zone to create” ADUs that meet specific requirements.

2 33. In addition, a local agency that denies an ADU application must provide “in writing a
3 full set of comments to the applicant with a list of items that are defective or deficient and a
4 description of how the application can be remedied by the applicant.” (Gov. Code, § 65852.2,
5 subd. (b)(2).)

6 34. Government Code section 65852.2, subdivision (a)(7), further provides: “No other
7 local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit
8 or a use permit under this subdivision.”

9 **Senate Bill 9**

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

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

18 37. SB 9 added, among other provisions, sections 65852.21 and 66411.7 to the
19 Government Code. Section 65852.21 requires local agencies to approve a proposed housing
20 development consisting of two residential units within a single-family zone on a ministerial basis.
21 Section 66411.7 requires local agencies to approve a lot split in a single-family zone on a
22 ministerial basis. Both provisions became operative on January 1, 2022.

23 38. SB 9 placed limits on a local agency’s ability to deny proposed projects, but it did not
24 entirely eliminate local agencies from the approval process. Local agencies are still permitted to
25 “impose objective zoning standards, objective subdivision standards, and objective design review
26 standards,” so long as such standards do not have “the effect of physically precluding the
27 construction of up to two units or...would physically preclude either of the two units from being at
28 least 800 square feet in floor area” within a single-family zone. (Gov. Code, § 65852.21, subd.

1 (b.) Similarly, local agencies can impose “objective” standards with respect to lot splits, so long
2 as those standards do not “have the effect of physically precluding the construction of two units
3 on either of the resulting parcels or that would result in a unit size of less than 800 square feet”
4 within a single-family zone. (Gov. Code, § 66411.7, subd. (c).) Finally, the legislative body of a
5 local agency may reject an SB 9 project if it finds, based on a preponderance of the evidence, that
6 the proposed project would have a “specific, adverse impact” on “public health and safety or the
7 physical environment and for which there is no feasible method to satisfactorily mitigate or avoid
8 the specific, adverse impact.” (Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d); see also
9 65589.5, subd. (d)(2).)

10 **The Housing Crisis Act**

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

21 40. The HCA also prohibits a local government from “[i]mposing a moratorium or
22 similar restriction or limitation on housing development ... within all or a portion of the
23 jurisdiction ... other than to specifically protect against an imminent threat to the health and
24 safety of persons residing in, or within the immediate vicinity of, the area subject to the
25 moratorium...” (Gov. Code, § 66300, subd. (b)(1)(B)(i).)

26 41. In addition, a local agency shall not enforce such “a moratorium or other similar
27 restriction on or limitation of housing development until it has submitted the ordinance to, and
28

1 received approval from, [HCD].” (Gov. Code, § 66300, subd. (b)(1)(B)(ii).) If HCD denies
2 approval, “that ordinance shall be deemed void.” (*Ibid.*)

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

4 42. On or about December 20, 2022, HCD became aware that the Huntington Beach City
5 Council planned to resist its obligations under California’s housing laws. At its December 20th
6 meeting, the City Council directed the City Attorney, via Council Member Items Report 22-1096,
7 to explore a potential legal challenge to the City’s RHNA allocation and to draft an ordinance that
8 would conflict with the mandate of the Housing Accountability Act by banning Builder’s Remedy
9 projects.

10 43. On January 9, 2023, HCD issued a Notice of Potential Violation notifying the City
11 that, among other things, recent court decisions confirmed that the RHNA allocation process is
12 not subject to judicial review, and that any attempt to circumvent the Housing Accountability Act
13 could result in a referral to the Attorney General’s Office.

14 44. The City persisted in its efforts to flout the state’s housing laws. The City Council
15 introduced Zoning Text Amendment No. 2023-001, which would ban Builder’s Remedy projects,
16 for consideration at an upcoming meeting. On February 13, 2023, the Attorney General’s Office
17 issued a letter explaining that the proposed ordinance expressly conflicted with applicable state
18 law and warning that the Attorney General’s Office was prepared to begin an enforcement action
19 if necessary.¹

20 45. Separately, the City Council decided it would attempt to ban ADU and SB 9-eligible
21 project applications. On February 21, 2023, HCD issued a Notice of Potential Violation to the
22 City to advise it that, among other things, the ADU ban was unlawful and would bring the City’s
23 draft housing element out of compliance with the Housing Element Law. The Attorney General’s
24 Office issued a separate letter on February 21, 2023, informing the City that, among other things,
25 a prohibition on ADU and SB 9-eligible projects would violate state law, including the Housing
26 Crisis Act (Gov. Code, § 66300) and the Housing Accountability Act (Gov. Code, § 65589.5).

27 _____
28 ¹ The City Council has not as of the date of this filing adopted the Builder’s Remedy ban.
Petitioners will challenge any attempt to do so.

1 46. Nevertheless, at its February 21, 2023 meeting, the Huntington Beach City Council
2 adopted Action Item No. 23-172 (the “Action Item”), directing the City Manager to “cease the
3 processing of all applications/permits brought to the City by developers under SB 9, SB 10, or
4 ‘state law related’ ADU projects, until the courts have adjudicated the matter(s).”² The Action
5 Item also directed the City Attorney to “take any legal action necessary to challenge SB 9 and SB
6 10 and the laws that permit ADU’s [sic].”

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

10 48. On February 22, 2023, the City, pursuant to its Action Item, began refusing to accept
11 any ADU and SB 9 permit applications. Its Planning Division website stated that, effective as of
12 that date, no SB 9 or ADU permit applications would be accepted until “any legal challenges are
13 resolved.”

14 49. On March 8, 2023, Petitioners filed the instant lawsuit challenging the unlawful ban
15 on SB 9 and ADU permit applications.

16 50. At its March 21, 2023 meeting, the City Council voted to direct the City Manager to
17 “accept applications and process permits for accessory dwelling units (ADUs) and SB 9
18 development projects” but did not formally rescind the Action Item.

19 51. The City’s voluntary cessation of its unlawful conduct under California’s housing
20 laws does not indicate that it will obey the housing laws in the future. It is settled that “voluntary
21 discontinuance of alleged illegal practices does not remove the pending charges of illegality from
22 the sphere of judicial power or relieve the court of the duty of determining the validity of such
23 charges where by the mere volition of a party the challenged practices may be resumed.”

24 (*Robinson v. U-Haul Co. of California* (2016) 4 Cal. App. 5th 304, 315–16 (quoting *Marin*
25 *County Bd. Of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 929.))

26 52. The City’s continuing pattern of resistance to its obligations under California’s

27 ² SB 10 permits local agencies to adopt ordinances allowing for increased density near
28 transit-rich and/or urban infill sites. It is a voluntary, opt-in upzoning law. The City has not as of
the date of this filing brought a challenge to that law.

1 housing laws, as alleged in the foregoing paragraphs and *infra*, indicates that a judicial
2 determination of rights and obligations is necessary. The City has not unambiguously committed
3 itself to a “violation-free future,” and Petitioners reasonably “doubt the bona fides of [the] newly
4 established law-abiding policy.” (*Robinson, supra*, 4 Cal.App.5th at 316.)

5 53. The City’s temporary cessation of unlawful activities does not stop the City from
6 engaging in unlawful behavior again in the future. Absent a resolution to this litigation,
7 Petitioners have no reason to believe the City will permanently comply with state housing law,
8 including the ADU laws and SB 9.

9 **The City of Huntington Beach’s Failure to Adopt a Housing Element**

10 54. The statutory deadline for the City to adopt a sixth cycle housing element, for the
11 planning period covering October 2021 through October 2029, was October 15, 2021.

12 55. City staff previously worked with HCD to develop a compliant sixth cycle housing
13 element. On September 30, 2022, HCD advised the City that its September 23, 2022 draft housing
14 element met statutory requirements at the time of review.

15 56. That draft housing element projected the development of 487 new ADUs to meet the
16 City’s RHNA allocation.

17 57. On or about February 17, 2023, HCD discovered the City Council was considering a
18 ban on ADU applications, in contravention of state law and notwithstanding the draft housing
19 element’s reliance on ADU production to meet its RHNA target.

20 58. On February 21, 2023, HCD issued a Notice of Potential Violation to the City to
21 advise it that, among other things, the ADU ban would bring the City’s draft housing element out
22 of compliance with the Housing Element Law. In particular, HCD warned that the ADU ban
23 represented a new constraint on the production of housing that would have to be addressed in the
24 new housing element, and that the pending ADU ban called into question the draft element’s
25 assumption that new ADU production would help meet the City’s RHNA target.

26 59. Later that day, the City Council passed a ban on ADU and SB 9 permit applications.

27 60. On February 22, 2023, HCD issued a Notice of Violation advising the City that,
28 among other things, the just-passed ADU ban brought the City out of compliance with the

1 Housing Element Law and that its draft housing element would need to be revised. The Notice of
2 Violation also advised the City of the potential penalties for noncompliance and stated that HCD
3 would refer the matter to the Office of the Attorney General absent corrective action.

4 61. HCD met with City representatives on March 8, 2023, to discuss the City's violation
5 of the Housing Element Law. HCD discussed with City staff the City's reliance on ADU
6 production to meet RHNA targets, the changes to its site inventory, and changes necessary to
7 account for new requirements set by AB 2339 regarding the identification of sites suitable for
8 emergency shelters. At that meeting, City staff expressed confidence that the City would vote to
9 adopt the housing element soon.

10 62. At its March 21, 2023 meeting, the City Council considered but did not pass
11 Resolution 2023-14, which would have approved the City's draft housing element.

12 63. HCD met again with City representatives on March 24, 2023. At that meeting,
13 discussion topics included minor changes to the sites inventory of the City's plan, and an inquiry
14 to City staff as to whether the AB 2339-related edits were included in the housing element. At
15 this meeting, City staff expressed hope that the City would adopt the housing element at its April
16 4, 2023 meeting.

17 64. At its April 4, 2023 meeting, the City Council again considered and did not pass
18 Resolution 2023-14, thereby persisting in its failure to approve a compliant housing element for
19 the sixth cycle.

20 65. The City has made no further efforts to adopt any sixth cycle housing element.

21 **FIRST CAUSE OF ACTION**

22 **Writ of Mandate (Code Civ. Proc., § 1085; Gov. Code, §§ 65751, 65585, subd. (n)) –**
23 **Violation of Gov. Code, § 65585)**
24 **[Against All Defendants]**

25 66. Petitioners incorporate by reference each and every allegation of the preceding
26 paragraphs.

27 67. Under California's Housing Element Law, the City must ensure that its general plan
28 contains a legally compliant housing element.

1 68. The City has abdicated this duty. The City has failed to adopt a legally compliant
2 sixth cycle housing element by the October 15, 2021 statutory deadline, and the City Council’s
3 most recent actions and inactions on April 4, 2023 show that the City has no intention of
4 complying with the Housing Element Law.

5 69. The City’s failure to act is arbitrary, capricious, entirely lacking in evidentiary
6 support, contrary to established public policy, unlawful, procedurally unfair, an abuse of
7 discretion, and a failure to act as required by law.

8 70. Accordingly, a writ of mandate should issue as provided under Government Code
9 section 65754 ordering the City to come into compliance with California’s Housing Element Law
10 (Gov. Code, § 65580 et seq.) within 120 days by adopting a compliant sixth cycle housing
11 element that meets the City’s regional housing needs goals, as determined by HCD.

12 71. Petitioners have a beneficial interest in the issuance of such a writ, given their
13 authority and mandate to enforce substantial compliance with California’s Housing Element Law.
14 Likewise, the public at large, as well as the lower income residents and workforce in the City,
15 have a significant interest in ensuring that the City complies with the law.

16 72. Petitioners have exhausted all required administrative remedies, or are excused from
17 exhausting its remedies due to the futility of pursuing such remedies, among other things.

18 73. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law.
19 The only remedy provided by law for Petitioners to obtain relief is this Petition for Writ of
20 Mandate pursuant to Code of Civil Procedure section 1085.

21 **SECOND CAUSE OF ACTION**

22 **Declaratory and Injunctive Relief (Code Civ. Proc., § 1060, Gov. Code, §§ 65755, 65757) –**
23 **Violation of Gov. Code, §§ 65585 (Housing Element Law); 65850 et seq. (ADU Laws);**
24 **65852.21, 66411.7 (SB 9)**
25 **[Against All Defendants]**

26 74. Petitioners incorporate by reference each and every allegation of the preceding
27 paragraphs.

28 75. There is a controversy between Petitioners and the City as to whether the City has
complied with California’s Housing Element Law (Gov. Code, § 65580, et seq.). Based on the

1 events alleged above, it cannot be disputed that the City is noncompliant with the Housing
2 Element Law and, as made clear by the City Council's April 4, 2023 deliberation and vote, is
3 making no progress on becoming compliant. Further, based on information and belief, Petitioners
4 allege that the City is aware that it is out of compliance with the Housing Element Law and has
5 failed to take any meaningful action to adopt a substantially compliant element, even though its
6 sixth cycle housing element is now almost eighteen months overdue.

7 76. It is necessary and appropriate for the Court to render a declaratory judgment that sets
8 forth the parties' legal rights and obligations with respect to whether the city is substantially
9 compliant with California's Housing Element Law. Among other things, such a judgment would
10 inform the parties' conduct in connection with future contemplated amendments to the City's
11 housing element, including those that occur routinely at the beginning of each housing cycle.

12 77. Further, there is a controversy between Petitioners and the City as to whether the City
13 complied with state ADU laws and SB 9. The City's ban on ADU and SB 9 projects, even if
14 transient, expressly conflicted with applicable state law. Based on information and belief,
15 Petitioners allege that the City deliberately defied applicable state law, voluntarily ceased doing
16 so once this litigation was filed, and may by its own volition resume violating state law in the
17 absence of a judicial remedy.

18 78. It is necessary and appropriate for the Court to render a declaratory judgment that sets
19 forth the parties' legal rights and obligations with respect to whether the City is subject to the
20 state's housing laws.

21 79. Petitioners therefore request a declaration that the City is not substantially compliant
22 with California's Housing Element Law (Gov. Code, § 65580, *et seq.*), that the City's ADU and
23 SB 9 project ban violated the Housing Crisis Act (Gov. Code, § 66300), the ADU laws (Gov.
24 Code, § 65850 *et seq.*), and SB 9 (Gov. Code, §§ 65852.21, 66411.7), and that the City must
25 comply with the ADU laws (Gov. Code, § 65850 *et seq.*) and SB 9 (Gov. Code, §§ 65852.21;
26 66411.7).

27 80. In addition to these remedies, Petitioners are immediately entitled to temporary relief
28 under Government Code section 65757, including but not limited to the suspension of the City's

1 authority to issue non-residential building permits, until the City has substantially complied with
2 Housing Element Law by properly adopting and implementing an adequate housing element.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioners pray as follows:

- 5 1. For a writ of mandate ordering the City to adopt a housing element in compliance with
- 6 the Housing Element Law within 120 days. (Gov. Code, §§ 65580 *et seq.*)
- 7 2. For temporary relief, including but not limited to the suspension of the City’s non-
- 8 residential permitting authority, and mandating the approval of certain residential
- 9 developments. (Gov. Code, §§ 65755, 65757.)
- 10 3. For a declaration that the City is in violation of the Housing Element Law. (Gov. Code,
- 11 §§ 65580 *et seq.*; 65585, subd. (n).)
- 12 4. For a declaration that the City’s ban on ADU and SB 9 projects violated the Housing
- 13 Crisis Act (Gov. Code, § 66300), the ADU laws (Gov. Code, § 65850 *et seq.*), and SB 9
- 14 (Gov. Code, §§ 65852.21, 66411.7), and that the City must comply with the ADU laws
- 15 (Gov. Code, § 65850 *et seq.*) and SB 9 (Gov. Code, §§ 65852.21; 66411.7).
- 16 5. For statutory fines, levies, and penalties. (Gov. Code, § 65585, subd. (l).)
- 17 6. For costs and attorneys’ fees.
- 18 7. For any other relief the Court may deem appropriate.

19 Dated: April 10, 2023

Respectfully submitted,

20 ROB BONTA
 21 Attorney General of California
 22 DANIEL A. OLIVAS
 23 Senior Assistant Attorney General
 24 DAVID PAI
 25 Supervising Deputy Attorney General



26 THOMAS P. KINZINGER
 27 Deputy Attorney General
 28 *Attorneys for Petitioner and Plaintiff, The
 People of California ex rel. Rob Bonta,
 and the California Department of Housing
 and Community Development*

SA2023301106

EXHIBIT B

From: [Gates, Michael](#)
To: [David Pai](#)
Cc: [Vigliotta, Mike](#); [Matthew Struhar](#); [Thomas Kinzinger](#); [Said, Nadin](#)
Subject: RE: People and HCD v. City of Huntington Beach-- stipulation to amend petition/complaint
Date: Friday, April 7, 2023 12:25:58 PM
Attachments: [image003.png](#)

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

No. The City will not agree. In fact, the City will oppose leave to amend.

The novel basis for the new controversy you are now presenting in your email today requires the filing of a new lawsuit by the State. What you are now newly alleging is an entirely new set of facts and entirely different laws, none of which relates back the State's lawsuit the City has deemed moot and presently lacking any legal controversy. The State will be required to follow the laws, including those of Procedure. With this in mind, I'll renew my request that the State dismiss it's moot lawsuit and file a new lawsuit with the new allegations.

Thank you.

Michael E. Gates, City Attorney
OFFICE OF THE CITY ATTORNEY
CITY OF HUNTINGTON BEACH
2000 Main St., Fourth Floor
Huntington Beach, CA 92648
Ph: [\(714\) 536-5538](tel:(714)536-5538) Fx: [\(714\) 374-1590](tel:(714)374-1590)

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----- Original message -----

From: David Pai <David.Pai@doj.ca.gov>
Date: 4/7/23 12:15 PM (GMT-08:00)
To: "Gates, Michael" <Michael.Gates@surfcity-hb.org>
Cc: "Vigliotta, Mike" <MVigliotta@surfcity-hb.org>, Matthew Struhar <Matthew.Struhar@doj.ca.gov>, Thomas Kinzinger <Thomas.Kinzinger@doj.ca.gov>
Subject: People and HCD v. City of Huntington Beach-- stipulation to amend petition/complaint

Michael:

We are in receipt of the City's answer to the petition and complaint, filed and served on April 3, 2023. I don't believe a summons has issued yet, so thank you for agreeing to waive service and promoting efficiency in litigating this matter. We will, of course, extend similar courtesies throughout the pendency of this litigation. On that note, as discussed with you over the phone on March 30, 2023, we intend to amend our petition to include Housing Element Law violations *if* the City Council did not adopt and implement the draft housing element the City's planning staff presented on April 4, 2023. It has come to our attention that the City Council tabled that item once again, and remains out of compliance with

Housing Element Law.

Since the City answered the outdated original petition and complaint, Petitioners are now required to file a regularly-noticed motion seeking leave to amend, which we intend to do so on Monday. Will the City and co-respondents/defendants, in the continued interest of judicial efficiency, stipulate to such an amended petition and complaint? The amended petition and complaint will seek a writ of mandate ordering compliance with Housing Element Law within 120 days, injunctive/temporary relief until the City complies with Housing Element Law, and declaratory relief with respect to the City Council's prior actions as set forth in the original petition and complaint. Such stipulation, of course, does not preclude the City from bringing a dispositive motion and challenging the sufficiency of the pleadings, and would be aligned with the judicial policy favoring amended pleadings so as to resolve all disputed matters between the parties in a single lawsuit.

Please let us know via a reply to this email by the close of business today. Thank you.



DAVID PAI | Supervising Deputy Attorney General
Land Use and Conservation Section, Public Rights Division
Department of Justice, Office of the Attorney General
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EXHIBIT 5

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD

APPEALS DETERMINATION: CITY OF HUNTINGTON BEACH

Hearing Dates: January 19 and 25, 2021

The City of Huntington Beach has appealed its draft Regional Housing Needs Assessment (“RHNA”) allocation. The following constitutes the decision of the Southern California Association of Governments’ RHNA Appeals Board regarding the City’s appeal.

I. Statutory Background

The California Legislature developed the RHNA process [Government Code Section 65580 *et seq.* (the “RHNA statute”)] in 1977 to address the serious affordable housing shortage in California. Over the years, the housing element laws, including the RHNA process, have been revised to address the changing housing needs in California. As of the last revision, the Legislature has declared that:

- (a) The availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.
- (b) The early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels.
- (c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.
- (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.
- (f) Designating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality’s housing need

for all income levels is essential to achieving the state’s housing goals and the purposes of this article. (Cal. Govt. code § 65580).

To carry out the policy goals above, the Legislature also codified the intent of the housing element laws:

- (a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.
- (b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.
- (c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.
- (d) To ensure that each local government cooperates with other local governments in order to address regional housing needs. (Govt. Code § 65581).

The housing element laws exist within a larger planning framework which requires each city and county in California to develop and adopt a comprehensive, long-term general plan for the physical development of the jurisdiction (See Govt. Code § 65300). A general plan consists of many planning elements, including an element for housing (See Govt. Code § 65302). In addition to identifying and analyzing the existing and projected housing needs, the housing element must also include a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. Consistent with Section 65583, adequate provision must be made for the existing and projected housing needs of all economic segments of the community.

A. [RHNA Determination by HCD](#)

Pursuant to Section 65584(a), each cycle of the RHNA process begins with the California Department of Housing and Community Development’s (HCD) determination of the existing and projected housing need for each region in the state. HCD’s determination must be based on “population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments.” (Govt. Code § 65584.01(a)). The RHNA Determination allocates the regional housing need among four income categories: very low, low, moderate, and above moderate.

Prior to developing the existing and projected housing need for a region, HCD “shall meet and consult with the council of governments regarding the assumptions and methodology to be used by HCD

to determine the region’s housing needs,” and “the council of governments shall provide data assumptions from the council’s projections, including, if available, the following data for the region:

- “(A) Anticipated household growth associated with projected population increases.
- (B) Household size data and trends in household size.
- (C) The percentage of households that are overcrowded and the overcrowding rate for a comparable housing market. For purposes of this subparagraph:
 - (i) The term “overcrowded” means more than one resident per room in each room in a dwelling.
 - (ii) The term “overcrowded rate for a comparable housing market” means that the overcrowding rate is no more than the average overcrowding rate in comparable regions throughout the nation, as determined by the council of governments.
- (D) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.
- (E) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs. For purposes of this subparagraph, the vacancy rate for a healthy rental housing market shall be considered no less than 5 percent.
- (F) Other characteristics of the composition of the projected population.
- (G) The relationship between jobs and housing, including any imbalance between jobs and housing.
- (H) The percentage of households that are cost burdened and the rate of housing cost burden for a healthy housing market. For the purposes of this subparagraph:
 - (i) The term “cost burdened” means the share of very low, low-, moderate-, and above moderate-income households that are paying more than 30 percent of household income on housing costs.
 - (ii) The term “rate of housing cost burden for a healthy housing market” means that the rate of households that are cost burdened is no more than the average rate of households that are cost burdened in comparable regions throughout the nation, as determined by the council of governments.
- (I) The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section

8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the data request.” (Govt. Code § 65584.01(b)(1)).

Legislative changes in 2018 modified the nature of the regional housing need determination for the 6th cycle of RHNA by adding measures of household overcrowding and housing cost burden to the list of factors to be considered by HCD for the determination of housing need. These factors reflect additional latent housing need in the current population (i.e., “existing need”).

HCD may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. (Govt. Code § 65584.01(b)(2)). After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed above and the methodology it shall use, and HCD shall provide these determinations to the council of governments. (Id.)

After consultation with the council of governments, HCD shall make a determination of the region’s existing and projected housing need which “shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan.” (Govt. Code § 65584.01(c)(1)). Within 30 days of receiving the final RHNA Determination from HCD, the council of governments may file an objection to the determination with HCD. The objection must be based on HCD’s failure to base its determination on either the population projection for the region established under Section 65584.01(a), or a reasonable application of the methodology and assumptions determined under Section 65584.01(b). (See Govt. Code § 65584.01(c)(2)). Within 45 days of receiving the council of governments objection, HCD must “make a final written determination of the region’s existing and projected housing need that includes an explanation of the information upon which the determination was made.” (Govt. Code § 65584.01(c)(3)).

B. Development of RHNA Methodology

Each council of governments is required to develop a methodology for allocating the regional housing need to local governments within the region. The methodology must further the following objectives:

“(1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households.

(2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region’s greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.

(3) Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.

(4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent American Community Survey.

(5) Affirmatively furthering fair housing.” (Govt. Code § 65584(d)).

To the extent that sufficient data is available, the council of government must also include the following factors in development of the methodology consistent with Section 65884.04(e):

“(1) Each member jurisdiction’s existing and projected jobs and housing relationship. This shall include an estimate based on readily available data on the number of low-wage jobs within the jurisdiction and how many housing units within the jurisdiction are affordable to low-wage workers as well as an estimate based on readily available data, of projected job growth and projected household growth by income level within each member jurisdiction during the planning period.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water

Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis, including land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to nonagricultural uses.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts its conversion to nonagricultural uses.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of the jurisdiction that prohibits or restricts conversion to nonagricultural uses.

(5) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(6) The percentage of existing households at each of the income levels listed in subdivision (e) of Section 65584 that are paying more than 30 percent and more than 50 percent of their income in rent.

(7) The rate of overcrowding.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) The housing needs of individuals and families experiencing homelessness. If a council of governments has surveyed each of its member jurisdictions pursuant to subdivision (b) on or before January 1, 2020, this paragraph shall apply only to the

development of methodologies for the seventh and subsequent revisions of the housing element.

(11) The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the analysis.

(12) The region’s greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080.

(13) Any other factors adopted by the council of governments, that further the objectives listed in subdivision (d) of Section 65584, provided that the council of governments specifies which of the objectives each additional factor is necessary to further. The council of governments may include additional factors unrelated to furthering the objectives listed in subdivision (d) of Section 65584 so long as the additional factors do not undermine the objectives listed in subdivision (d) of Section 65584 and are applied equally across all household income levels as described in subdivision (f) of Section 65584 and the council of governments makes a finding that the factor is necessary to address significant health and safety conditions.” (Govt. Code § 65584.04(e)).

To guide development of the methodology, each council of governments surveys its member jurisdictions to request, at a minimum, information regarding the factors listed above (See Govt. Code § 65584.04(b)). If a survey is not conducted, however, a jurisdiction may submit information related to the factors to the council of governments before the public comment period for the draft methodology begins (See Govt. Code § 65584.04(b)(5)).

Housing element law also explicitly prohibits consideration of the following criteria in determining, or reducing, a jurisdiction’s share of the regional housing need:

- (1) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county.
- (2) Prior underproduction of housing in a city or county from the previous regional housing need allocation, as determined by each jurisdiction’s annual production report.
- (3) Stable population numbers in a city or county from the previous regional housing needs cycle. (Govt. Code § 65584.04(g)).

Finally, Section 65584.04(m) requires that the final RHNA Allocation Plan “allocate[s] housing units within the region consistent with the development pattern included in the sustainable communities strategy,” ensures that the total regional housing need by income category is maintained, distributes units

for low- and very low income households to each jurisdiction in the region, and furthers the five objectives listed in Section 65584(d). (See Govt. Code § 65584.04(m)).

C. Public Participation

Section 65584.04(d) provides that “public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs.” The proposed methodology, along with any relevant underlying data and assumptions, an explanation of how the information from the local survey used to develop the methodology, how local planning factors were and incorporated into the methodology, and how the proposed methodology furthers the RHNA objectives in Section 65584(e), must be distributed to the cities, counties, and subregions, and members of the public requesting the information and published on the council of government’s website. (Govt. Code § 65584.04(d) and (f)).

The council of governments is required to open the proposed methodology to public comment and “conduct at least one public hearing to receive oral and written comments on the proposed methodology.” (Govt. Code § 65584.04(d)). Following the conclusion of the public comment period and after making any revisions deemed appropriate by the council of governments as a result of comments received during the public comment period and consultation with the HCD, the council of governments publishes the proposed methodology on its website and submits it, along with the supporting materials, to HCD. (See Govt. Code § 65584.04(h)).

D. HCD Review of Methodology and Adoption by Council of Governments

HCD has 60 days to review the proposed methodology and report its written findings to the council of governments. The written findings must include a determination by HCD as to “whether the methodology furthers the objectives listed in subdivision (d) of Section 65584.” (Govt. Code § 65584.04(i)). If HCD finds that the proposed methodology is not consistent with the statutory objectives, the council of governments must take one of the following actions: (1) revise the methodology to further the objectives in state law and adopt a final methodology; or (2) adopt the methodology without revisions “and include within its resolution of adoption findings, supported by substantial evidence, as to why the council of governments, or delegate subregion, believes that the methodology furthers the objectives listed in subdivision (d) of Section 65584 despite the findings of [HCD].” (Govt. Code § 65584.04(i)). Upon adoption of the final methodology, the council of governments “shall provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion, as applicable, and to HCD, and

shall publish the adopted allocation methodology, along with its resolution and any adopted written findings, on its internet website.” (Govt. Code § 65584.04(k)).

E. [RHNA Draft Allocation, Appeals, and Adoption of Final RHNA Plan](#)

Based on the adopted methodology, each council of governments shall distribute a draft allocation of regional housing needs to each local government in the region and HCD and shall publish the draft allocation on its website. (See Govt. Code § 65584.05(a)). Upon completion of the appeals process, discussed in more detail below, each council of governments must adopt a final regional housing need allocation plan and submit it to HCD (See Govt. Code § 65584.05(g)). HCD has 30 days to review the final allocation plan and determine if it is consistent with the regional housing need developed pursuant to Section 65584.01. The resolution approving the final housing need allocation plan shall demonstrate that the plan is consistent with the SCS and furthers the objectives listed in Section 65584(d) as discussed above. (See Govt. Code § 65584.04(m)(3)).

F. [The Appeals Process](#)

Within 45 days of following receipt of the draft allocation, a local government or HCD may appeal to the council of governments for a revision of the share of the regional housing need proposed to be allocated to one or more local governments. (See Govt. Code § 65584.05(b)).

“Appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in subdivision (d) of Section 65584. An appeal pursuant to this subdivision shall be consistent with, and not to the detriment of, the development pattern in an applicable sustainable communities strategy developed pursuant to paragraph (2) of subdivision (b) of Section 65080. Appeals shall be limited to any of the following circumstances:

- (1) The council of governments or delegate subregion, as applicable, failed to adequately consider the information submitted pursuant to subdivision (b) of Section 65584.04.
- (2) The council of governments or delegate subregion, as applicable, failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to, Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in subdivision (d) of Section 65584.

(3) A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted pursuant to subdivision (b) of Section 65584.04. Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.” (Govt. Code § 65584.05(b)).

At the close of the filing period for filing appeals, the council of governments shall notify all other local governments within the region and HCD of all appeals and shall make all materials submitted in support of each appeal available on its website. (See Govt. Code § 65584.05(c)). Local governments and the department may, within 45 days, comment on one or more appeals. (Id.).

No later than 30 days after the close of the comment period, and after providing local governments within the region at least 21 days prior notice, the council of governments “shall conduct one public hearing to consider all appeals filed . . . and all comments received” (Govt. Code § 65584.05(d)). No later than 45 days after the public hearing, the council of governments shall (1) make a final determination that either accepts, rejects, or modifies each appeal for a revised share filed pursuant to Section 65584.05(b); and (2) issue a proposed final allocation plan. (Govt. Code § 65584.05(e)). “The final determination on an appeal may require the council of governments . . . to adjust the share of the regional housing need allocated to one or more local governments that are not the subject of an appeal.” (Id.).

Pursuant to Section 65584.05(f), if the council of governments lowers any jurisdiction’s allocation of housing units as a result of its appeal, and this adjustment totals 7 percent or less of the regional housing need, the council of governments must redistribute those units proportionally to all local governments in the region. (See Govt. Code § 65584.05(f)). In no event shall the total distribution of housing need equal less than the regional housing need as determined by HCD. (Id.).

Within 45 days after issuance of the proposed final allocation plan by the council of governments, the council of governments shall hold a public hearing to adopt a final allocation plan. (Govt. Code § 65584.05(g)). “To the extent that the final allocation plan fully allocates the regional share of statewide housing need . . . and has taken into account all appeals, the council of governments shall have final authority to determine the distribution of the region’s existing and projected housing need.” (Id.) The council of governments shall submit its final allocation plan to HCD within three days of adoption. Within 30 days after HCD’s receipt of the final allocation plan adopted by the council of governments, HCD “shall determine if the final allocation plan is consistent with the existing and projected housing need for the

Attachment: Determination Regarding Appeal from the City of Huntington Beach (Final Determination of Appeals Decisions)

region,” and it “may revise the determination of the council of governments if necessary to obtain this consistency.” (Id.).

II. Development of the RHNA Process for the Six-County Region Covered by the SCAG Council of Governments (Sixth Cycle)

A. Development of the Draft RHNA Allocation Plan¹

As described in Attachment 1 to the staff reports for each appeal, the Sixth Cycle RHNA began in October 2017, when SCAG staff began surveying each of the region’s jurisdictions on its population, household, and employment projections as part of a collaborative process to develop the Integrated Growth Forecast which would be used for all regional planning efforts including the Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS” or “Connect SoCal”).² On or about December 6, 2017, SCAG sent a letter to all jurisdictions requesting input on the Connect SoCal growth forecast. SCAG met one-on-one with all 197 local jurisdictions between November 2017 and July 2018 and provided training opportunities and staff support. Following input from SCAG’s Technical Working Group (TWG), the Connect SoCal growth forecast reflected precisely the jurisdiction-level growth totals provided during this process.

Forecasts for jurisdictions in Orange County were developed through the 2018 Orange County Projections (OCP-2018) update process conducted by the Center for Demographic Research (CDR) at Cal State Fullerton. Jurisdictions were informed of this arrangement by SCAG at the kickoff of the Process.

On March 19, 2019, SCAG distributed a packet of methodology surveys, which included the local planning factor survey (formerly known as the “AB 2158 factor survey”), Affirmatively Furthering Fair Housing (AFFH) survey, and replacement need survey, to SCAG jurisdictions’ Community Development Directors. Surveys were due on April 30, 2019. SCAG reviewed all submitted responses as part of the development of the draft RHNA methodology.

Beginning in October 2018, the RHNA Subcommittee, a subcommittee formed by the Community, Economic and Human Development (“CEHD”) Committee to provide policy guidance in the development of the RHNA Allocation Methodology, held regular monthly meetings to discuss the RHNA process,

¹ The information discussed in this section has been made publicly available during the RHNA process and may be accessed at the SCAG RHNA website: <https://scag.ca.gov/rhna>.

² Information regarding Connect SoCal is available at: <http://rtpscs.scag.ca.gov/Pages/Regional-Housing-Needs-Assessment.aspx/index.htm>.

policies, and methodology, to provide recommended actions to the CEHD Committee. All jurisdictions and interested parties were notified of upcoming meetings to encourage active participation in the process.

On or about June 20, 2019, SCAG submitted a consultation package for the 6th Cycle RHNA to HCD.³ On or about August 22, 2019, SCAG received its RHNA determination from HCD.⁴ HCD determined a minimum regional housing need determination of 1,344,740 total units among four income categories for the SCAG region for 2021-2029.

On or about September 18, 2019, SCAG submitted its objection to HCD's RHNA determination.⁵ SCAG objected primarily on the grounds that (1) HCD did not base its determination on SCAG's Connect SoCal growth forecast; (2) HCD compared household overcrowding and cost-burden rates in the SCAG region to national averages rather than to rates in comparable regions; and (3) HCD used unrealistic comparison points to evaluate healthy market vacancy. SCAG proposed an alternative RHNA determination of 823,808 units.

On or about October 15, 2019, after consideration of SCAG's objection, HCD issued its Final RHNA determination of a minimum of **1,341,827** total units among four income categories.⁶ HCD noted that its methodology

“establishes the minimum number of homes needed to house the region's anticipated growth and brings these housing need indicators more in line with other communities, but does not solve for these housing needs. Further, RHNA is ultimately a requirement that the region zone sufficiently in order for these homes to have a potential to be built, but it is not a requirement or guarantee that these homes will be built. In this sense, the RHNA assigned by HCD is already a product of moderation and compromise; a minimum, not a maximum amount of planning needed for the SCAG region.”

Meanwhile, the RHNA Subcommittee began to develop the proposed RHNA Methodology that would be further developed into the Draft RHNA Methodology. On July 22, 2019, the RHNA Subcommittee recommended the release of the proposed RHNA Allocation Methodology to the CEHD Committee. The CEHD Committee reviewed, discussed, and further recommended the proposed

³ See https://scag.ca.gov/sites/main/files/file-attachments/cehd_fullagn_060619.pdf?1603863793

⁴ See https://scag.ca.gov/sites/main/files/file-attachments/6thcyclerrhna_scagdetermination_08222019.pdf?1602190292

⁵ See <https://scag.ca.gov/sites/main/files/file-attachments/scag-objection-letter-rhna-regional-determination.pdf?1602190274>

⁶ See <https://scag.ca.gov/sites/main/files/file-attachments/hcd-scag-rhna-final-determination-101519.pdf?1602190258>

methodology to the Regional Council, which approved to release the proposed methodology for distribution on August 1, 2019. During the 30-day public comment period, SCAG met with interested jurisdictions and stakeholders to present the process, answer questions, and collect input. This included four public hearings to collect verbal and written comments held on August 15, 20, 22, and 27, 2019 and a public information session held on August 29, 2019.

On September 25, 2019, SCAG staff held a public workshop on a Draft RHNA Methodology that was developed as a result of the comments received on the proposed RHNA Methodology. On October 7, 2019, the RHNA Subcommittee voted to recommend the Draft RHNA Methodology, though a substitute motion that changed certain aspects of the Methodology as proposed by a RHNA Subcommittee member failed. On October 21, 2019, the CEHD Committee voted to further recommend the Draft RHNA Methodology recommended by the RHNA Subcommittee.

SCAG staff received several requests from SCAG Regional Councilmembers and Policy Committee members in late October and early November 2021 to consider and review an alternative RHNA Methodology that was based on the one proposed through a substitute motion at the October 7, 2019 RHNA Subcommittee meeting. The staff report of the recommended Draft Methodology and an analysis of the alternative Methodology were posted online on November 2, 2019. Both the recommended and alternative methodologies were presented by SCAG staff at the Regional Council on November 7, 2019. Following extensive debate and public comment, SCAG's Regional Council voted to approve the alternative methodology as the Draft RHNA Methodology and provide it to HCD for review.

On January 13, 2020, HCD found that the Draft RHNA Methodology furthers the five statutory objectives of RHNA.⁷ On March 5, 2020, again following extensive debate and public comment, the Regional Council voted to approve the Draft RHNA Methodology as the Final RHNA Methodology.⁸

Following the adoption of the Final RHNA Methodology, the Regional Council decided to delay full adoption of Connect SoCal for 120 days in order to assess the impacts of the COVID-19 pandemic on the Connect SoCal growth forecast. SCAG adopted Connect SoCal on September 3, 2020, including its growth forecast. SCAG released its Draft RHNA allocations to local jurisdictions on or about September 11, 2020.

⁷ See <https://scag.ca.gov/sites/main/files/file-attachments/hcd-review-rc-approved-draft-rhna-methodology.pdf?1602190239>

⁸ See <https://scag.ca.gov/sites/main/files/file-attachments/scag-final-rhna-methodology-030520.pdf?1602189316>

III. The Appeal Process

The Regional Council adopted the 6th Cycle Appeals Procedures (“Appeals Procedures”) on May 7, 2020 (updated September 3, 2020).⁹ The Appeals Procedures sets forth existing law and the procedures and bases for an appeal. The Appeals Procedure was provided to all jurisdictions and posted on SCAG’s website. Consistent with the RHNA statute, the Appeals Procedures sets forth three grounds for appeal:

1. Methodology – That SCAG failed to determine the jurisdiction’s share of the regional housing need in accordance with the information described in the Final RHNA Methodology established and approved by SCAG, and in a manner that furthers, and does not undermine the five objectives listed in Government Code Section 65584(d);
2. Local Planning Factors and Information Affirmatively Furthering Fair Housing (AFFH)¹⁰ – That SCAG failed to consider information submitted by the local jurisdiction relating to certain local factors outlined in Govt. Code § 65584.04(e) and information submitted by the local jurisdiction relating to affirmatively furthering fair housing pursuant to Government Code § 65584.04(b)(2) and 65584(d)(5); and
3. Changed Circumstances – That a significant and unforeseen change in circumstance has occurred in the jurisdiction after April 30, 2019 and merits a revision of the information previously submitted by the local jurisdiction. Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred. (Appeals Procedure at pp. 2-4).

The Regional Council delegated authority to the RHNA Subcommittee to review and to make final decisions on RHNA revision requests and appeals pursuant to the RHNA Subcommittee Charter, which was approved by the Regional Council on February 7, 2019. As such, the RHNA Subcommittee has been designated the RHNA Appeals Board. The RHNA Appeals Board is comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region, and each county is entitled to one vote.

The period to file appeals commenced on September 11, 2020. Local jurisdictions were permitted to file revision requests until October 26, 2020. SCAG posted all appeals on its website at: <https://scag.ca.gov/rhna-appeals-filed>. Fifty-two (52) timely appeals were filed; however, two jurisdictions (West Hollywood and Calipatria) withdrew their appeals. Four jurisdictions (Irvine, Yorba Linda, Garden Grove, and Newport Beach) filed appeals of their own allocations as well as appeals of the

⁹ See <https://scag.ca.gov/sites/main/files/file-attachments/rhna-adopted-appeals-procedures090320.pdf?1602188788>

¹⁰ In addition to the local planning factors set forth in Section 65584.04(e), AFFH information was included in the survey to facilitate development of the RHNA methodology pursuant to Section 65584.04(b).

City of Santa Ana's allocation. Pursuant to Section 65584.05(c), HCD and several local jurisdictions submitted comments on one or more appeals by December 10, 2020.

The public hearing for the appeals occurred over the course of several weeks on January 6, 8, 11, 13, 15, 19, 22, and 25, 2021. Public comments received during the RHNA process were continually logged and posted on the SCAG website at <https://scag.ca.gov/rhna-comments>.

IV. The City's Appeal

The City of Huntington Beach submits an appeal and requests an unspecified RHNA reduction of its draft allocation of 13,337 units. The grounds for appeal are as follows:

- 1) Application of the adopted Final RHNA methodology for the 6th Cycle RHNA (2021-2029) - incorrect identification of a high-quality transit area (requested reduction of 3,625 units), use of improper year of forecast data (requested reduction 1,861 units).
- 2) Existing or projected jobs-housing balance.*
- 3) Availability of land suitable for urban development or conversion to residential use - impact of sea level rise, coastal inundation, and FEMA-designated flood zones (requested reduction of 2,000 units).
- 4) Distribution of household growth assumed for purposes of comparable Regional Transportation Plans (RTPs).*
- 5) The rate of overcrowding - City's lower overcrowding rate should be considered in allocating regional housing need (requested reduction of 6,428 units).
- 6) Housing needs generated by the presence of a university campus within any jurisdiction - housing needs generated by colleges or universities in the region in general (requested reduction 360 units).
- 7) The region's greenhouse gas emissions target – lower income workers are driving alone, longer commutes because housing would not be placed where it is needed and would not be consistent with the SCS.*

* These issues were checked on the appeals form but are discussed together with the arguments related to application of the methodology.

Other: Huntington Beach also argues that the State's imposition of RHNA allocation requirements on Charter Cities violates the constitution and is in and of itself an illegal act; the City also argues that the residual adjustment is illegal (and requests an associated reduction of 3,442 units); however, this is not a basis for a RHNA appeal. In addition, the City mentions change in circumstances with respect to COVID-19 although this box is not checked on the form.

A. Appeal Board Hearing and Review

The City's appeal was heard by the RHNA Appeals Board on January 19 and January 25, 2021, at a noticed public hearing. The City, HCD, other local jurisdictions, and the public were afforded an

opportunity to submit comments related to the appeal, and SCAG staff presented its recommendation to the Appeals Board. SCAG staff prepared a report in response to the City's appeal. That report provided the background for the draft RHNA allocation to the City and assessed the City's bases for appeal. The Appeals Board considered the staff report along with the submitted documents, testimony of those providing comments prior to the close of the hearing and comments made by SCAG staff prior to the close of the hearing, which are incorporated herein by reference. The City's staff report including Attachment 1 to the report is attached hereto as Exhibit A¹¹ (other attachments to the staff report may be found in the agenda materials at: <https://scag.ca.gov/sites/main/files/file-attachments/rhna-abph012521fullagn.pdf?1611371866>). Video of each hearing is available at: <https://scag.ca.gov/rhna-subcommittee>.

B. Appeals Board's Decision

Based upon SCAG's adoption of the Final RHNA Methodology and the Connect SoCal growth forecast, the RHNA Appeals Procedure and the process that led thereto, all testimony and all documents and comments submitted by the City, HCD, other local jurisdictions, and the public prior to the close of the hearing, and the SCAG staff report and SCAG staff comments prior to the close of the hearing, the RHNA Appeals Board hereby denies the appeal on the bases set forth in the staff report which are summarized as discussed below.

- 1), 2), 4), and 7) SCAG appropriately identified the Beach Boulevard corridor as constituting an HQTAs per its adopted procedures; use of future year HQTAs is not illegal and is a part of SCAG's adopted Final RHNA Methodology. The Final RHNA Methodology does not substitute 2045 forecasts in lieu of 2030 as Huntington Beach attests; data steps using forecasted growth were all conducted consistent with the Final RHNA Methodology and extensive review opportunities were provided to Huntington Beach of these data elements. The regional greenhouse gas reduction targets are met and the distribution of housing need is consistent with the Sustainable Communities Strategy (SCS).
- 3) SCAG appropriately considered available land constraints related to sea level rise, coastal inundation, and FEMA-designated flood zones; however, Huntington Beach does not

¹¹ Note that since the staff reports were published in the agenda packets, SCAG updated its website, and therefore, weblinks in the attached staff report and Attachment 1 have also been updated.

demonstrate why its draft RHNA allocation could not be accommodated in any way in the vast majority of the city's land area which is not subject to such constraints.

- 5) The City misinterprets the role of overcrowding in HCD's regional housing needs determination as necessitating inclusion in SCAG's final RHNA allocation methodology. SCAG's Final RHNA Methodology, which was found by HCD to further all necessary statutory objectives, does not and need not include a measure of jurisdiction-level overcrowding; to do so would constitute a change of the methodology which cannot be considered in the appeals process.
- 6) Huntington Beach fails to demonstrate why housing need generated by colleges and universities outside the city disproportionately affects Huntington Beach or in any way would reduce the city's housing need.

Other: The residual need component was applied correctly and is a part of SCAG's adopted final RHNA methodology, which was found by HCD to further all statutory objectives, including those related to Affirmatively Furthering Fair Housing (AFFH). Regarding change in circumstances, impacts from COVID-19 have not been shown to be long-range; as determined by the RHNA Appeals Board, there has not been a slowdown in major construction or a decrease in demand for housing or housing need. Furthermore, impacts from the pandemic are not unique to any single SCAG jurisdiction, and no evidence has been provided in the appeal that indicates that housing need within jurisdiction is disproportionately impacted in comparison to the rest of the SCAG region.

During the appeals hearing, the City raised a number of issues in its verbal comments that were addressed by staff in more detail during the hearing in response to these comments including (1) charter cities are not subject to the RHNA process; (2) a portion of Beach Boulevard (Route 29) is incorrectly identified as an HQTAs; and (3) the attorney for the Appeals Board cannot serve as an attorney for staff. On January 15, 2021 the City submitted information, which was received as a public comment, from an OCTA agenda and a scope of work for bus restructuring addressing potential changes in bus service as a result of decreased revenue.

Charter Cities are Not Exempt from RHNA

The City asserted that as a charter city, it is exempt from RHNA, i.e., the "State's attempt to impose RHNA allocation upon Charter Cities violates the State Constitution." Housing element law clearly and directly contradicts and refutes this argument. SB 35 which was enacted in September 2017 and

provides a streamlined approval process for affordable housing explicitly sets forth the following legislative intent:

“The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern, and not a municipal affair. Therefore, the changes made by this act are **applicable to a charter city**, a charter county, and a charter city and county.” (2017 Cal. Stats. Ch. 366 § 4) [emphasis added].

Furthermore, SB 1333 which was enacted a year later in September 2018 and further amended planning and zoning regulations as applied to charter cities as follows:

“In amending Sections 65356, 65852.150, 65852.25, 65860, 65863, 65863.4, 65863.6, 65863.8, 65866, 65867.5, and 65869.5 of the Government Code to **extend the applicability of those sections to charter cities**, and in amending Section 65700 of the Government Code to extend the applicability of Sections 65300.5, 65301.5, 65359, 65450, 65454, 65455, 65460.8, 65590, and 65590.1 of, and Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of, the Government Code, **to charter cities**, the Legislature hereby finds and declares that it does so to address the lack of affordable housing in the state, which is of vital statewide importance, and that ensuring the location, development, approval, and access to housing for all income levels in all jurisdictions in the state is a matter of statewide concern.” (2018 Cal. Stats. Ch. 856 §1) [emphasis added].

Therefore, based on the foregoing, it is clear, and the RHNA Appeals Board hereby finds and determines, that charter cities are not exempt from the RHNA allocation process.¹²

Identified HQTAs are Consistent with Data Provided by OCTA as Required by the Connect SoCal Data Process

During the hearing, the Appeals Board requested additional information regarding the location of the High Quality Transit Area (HQTA) and/or High Quality Transit Corridor (HQTC) along Beach Boulevard specifically with reference to Bus Routes 29 and 529 and their existing routes. Huntington Beach made the argument that Route 29 doesn't currently (pre-Covid) meet the timing for an HQTC south of Heil Avenue and points out that the 2018 Long Range Transportation Plan (LRTP) Figure 4.1 indicates a reduction recommended for Bus Route 29. In addition, OCTA has indicated that decreases in operating revenue will affect service levels into the future.

¹² During the hearing, the City indicated that it was in litigation with the State challenging the legality of SB 35 as to its application to charter cities. On January 28, 2021, the Los Angeles Superior Court denied the City's petition for writ of mandate (LASC Case No. 30-2019-01044945). On February 1, 2021, the Huntington Beach City Council voted not to appeal this ruling.

SCAG staff explained that the adopted Final RHNA Methodology is based on 2045 HQTAs and HQTCS from the adopted Connect SoCal Plan. As part of developing Connect SoCal, SCAG obtained information from each of the County Transportation Commissions as to the location of HQTAs and HQTCS in their jurisdiction. In Orange County the Orange County Transportation Authority (OCTA) was responsible for providing these data to SCAG. OCTA has consistently indicated to SCAG staff that they plan to run a 10-min frequency route along the corridor down to PCH and this is part of their LRTP and their submittal to SCAG. SCAG staff confirmed with OCTA staff during the Connect SoCal public comment period that they still intend to implement 10-min service on the Beach Boulevard corridor within the RTP planning horizon (i.e., by 2045). OCTA did not provide a route number in their submittal to SCAG. Beach Boulevard was just identified as a future high frequency route as identified in OCTA's Transit Master Plan which fed into their 2018 LRTP. Figure 4.1 of the LRTP represents the short-term Orange County Bus 360 transit network restructuring that OCTA implemented in response to recent ridership trends. This includes schedule adjustments to existing service on Beach Boulevard, but it does not affect the long-range commitment to implement high quality transit along this corridor by 2045. Figure 4.10 presents the long-term transit vision as expressed in the OC Transit Vision Master Plan and the OCTA 2018 LRTP. This includes a vision for high-frequency transit service on Beach Boulevard.

With respect to recent information regarding operating revenue reductions, as noted in the staff report (packet page 9), "...it is understood that planned transit projects are subject to further project-specific evaluation, but that is the nature of the long-range planning process. While there is an inherent chance that transit agencies may change future plans, SCAG's adopted Final RHNA Methodology uses this definition of 2045 HQTAs in order to better align future housing with anticipated future transit and promote the objectives and strategies of SCAG's adopted 2020 Connect SoCal Plan."

SCAG staff verbally made the following points at the hearing:

- Connect SoCal defines high quality transit areas (HQTAs) as "corridor-focused Priority Growth Areas within one half mile of an existing or planned fixed guideway transit stop or a bus transit corridor where buses pick up passengers at a frequency of every 15 minutes (or less) during peak commuting hours."
- Beach Boulevard, including the portion within the City of Huntington Beach south to PCH, has been identified by OCTA as a planned high frequency corridor since 2018:
 - In their 2018 OC Transit Vision transit master plan for Orange County
 - In their 2018 Long Range Transportation Plan (LRTP) which OCTA submitted to SCAG for inclusion in Connect SoCal

- City of Huntington Beach submitted a comment during the Draft Connect SoCal public review period, questioning the identification of Beach Boulevard in the City limits as an HQTAs. In response, SCAG confirmed that Beach Boulevard is identified by OCTA as a planned high quality transit corridor and therefore the HQTAs designation is appropriate.
- OCTA has not rescinded or amended their OC Transit Vision or their 2018 LRTP, nor have they communicated to SCAG their intention to change the identification of Beach Blvd as a planned high frequency corridor.

The following provides additional background information and a general timeline that was also generally verbally addressed by SCAG at the hearing:

January 2018 – OCTA completes the OC Transit Vision, a transit master plan for Orange County.¹³

- Chapter 5 identifies Beach Boulevard as a priority “Transit Opportunity Corridor” and recommends moving forward with planning, design, and.¹⁴
- Chapter 6 identifies a strategy for improvements to major corridors including Beach Blvd (p. 6-6), first implementing rapid bus (branded as Bravo!) with frequent service at least every 15 minutes, and then converting over time to more robust Bus Rapid Transit (BRT) with service at least every 10 minutes.¹⁵
- Public Engagement for OC Transit Vision includes engagement with elected officials and planning directors across the county.¹⁶ Page B-32 of the Public Engagement Report states:

“Orange County elected officials and planning directors were engaged to provide input on the OC Transit Vision as well as the update to OCTA’s Long-Range Transportation Plan. Like the Citizens Advisory Committee, the feedback from these groups was tied to key milestones and helped to shape the final recommendations. The first meetings were held in May 2017, to present key findings from the State of OC Transit and to introduce the Transit Investment Framework, and in September 2017 to share preliminary recommendations for the Transit Opportunity Corridors and other service enhancements.”

- The OC Transit Vision web page states that “The recommendations from the OC Transit Vision were included in OCTA’s 2019 Long-Range Transportation Plan”.¹⁷

¹³ See <https://www.octa.net/pdf/OC%20Transit%20Vision%20Final%20Report.pdf>.

¹⁴ See <https://www.octa.net/pdf/OC%20Transit%20Vision%20FINAL%2005%20TOC%20COMP.pdf> (first bullet on p. 5-1, Figure 5-1 on p. 5-2).

¹⁵ See <https://www.octa.net/pdf/OC%20Transit%20Vision%20FINAL%2006%20FR%20COMP.pdf> (Figure 6-3 on p. 6-5).

¹⁶ See <https://www.octa.net/pdf/App%20B%20Public%20Engagement.pdf>.

¹⁷ See <https://www.octa.net/Projects-and-Programs/Plans-and-Studies/Transit-Master-Plan/> (second paragraph, last sentence).

November 2018 – OCTA completes its 2018 Long Range Transportation Plan.¹⁸

- The 2018 LRTP identifies a commitment to “Implement OC Transit Vision” (pp. 93-94).
- Figure 4.10 (p. 102) identifies the Beach Blvd corridor as a “2040 High Frequency Corridor”
- LRTP lists “Beach Corridor – High-quality transit between Fullerton Park-and-Ride and Downtown Huntington Beach” (p. 145)
- Attachment D, Public Outreach Report, OCTA explicitly engaged with all 34 Orange County cities including elected officials (pp. 3-4 of Attachment D)
- Of the public comment letters received by OCTA on the 2018 LRTP, none were submitted by City of Huntington Beach.

November 2018 – OCTA submits its project list to SCAG for Connect SoCal, including its 2018 LRTP transit network model input files.

- Submittal includes projects 2160008, OC Transit Vision – Capital, and 2160009, OC Transit Vision – Operations & Maintenance.

November 2019 – SCAG releases Draft Connect SoCal for public review and comment

- Connect SoCal main book Exhibit 3.8 map identifies the Beach corridor as a high quality transit area.
- Transit Technical Report Exhibit 14 map identifies the Beach corridor as a high quality transit corridor.
- Project List Technical Report includes OC Transit Vision projects 2160008 and 2160009, consistent with OCTA’s project submittal.

January 2020 – City of Huntington Beach submits public comments on Connect SoCal¹⁹

- Comment 0001393.02 questions Beach Blvd as a HQTA.
- SCAG responds and confirms that Beach Blvd was identified by OCTA to SCAG as an HQTC which forms the basis for the HQTA.

Attorney for the Appeals Board May Serve in an Advisory/Evaluative Role for Both Appeals Board and Staff

During the hearing, the City asserted that its due process rights were violated because the attorney for the Appeals Board, Patricia Chen, was also “advocating” for staff. Ms. Chen referred to her explanation during the City of Yorba Linda proceeding and indicated that she was not serving as an advocate for any party including staff, appellants, or the Appeals Board, but rather, she has been assisting

¹⁸ See <https://www.octa.net/pdf/OCTALRTP111618FINAL.pdf>.

¹⁹ See https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial_public-participation-appendix-2.pdf?1606001847 (comment ID# 0001393, p. 92); https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial_public-participation-appendix-3b.pdf?1606001925 (Huntington Beach Comment Letter, p. 3).

the Appeals Board and staff understand the statutory framework of the RHNA process and advising as to SCAG's duties and responsibilities under the statute.

In the California Supreme Court decision, *Today's Fresh Start, Inc. v. Los Angeles County Office of Education*, 57 Cal.4th 197 (2013), an attorney served as both general counsel for the County Office of Education and its governing board. At issue was a legal challenge brought by a charter school seeking to overturn the County Board's decision to revoke its charter on the grounds that the County Office and County Board had an unconstitutional overlapping adversarial and advisory functions in part because the same attorney served as general counsel for both the County Office and the County Board. The court found no impropriety on the part of the attorney serving in both roles:

"Today's Fresh Start repeatedly characterizes her as a prosecutor, but this misstates both the nature of the proceedings and [the attorney's] role. The County Board was charged with considering and weighing the fruits of the staff investigation and what it showed in favor of and against revocation, as well as the argument and evidence of Today's Fresh Start. Statutorily, the County Office and County Board had no agenda, no stake in one outcome or the other. Thus, like many administrative proceedings the United States Supreme Court and we have previously approved, this was not a classic adversarial hearing, with a prosecutor and a defendant. There was no prosecutor here. [The attorney] presented no evidence, examined no witnesses, and made no argument in favor of revocation. Instead, [the attorney's] role was to advise the County Board on its duties in deciding whether to direct charter revocation, just as she had previously advised County Office staff as to their powers and responsibilities when conducting an investigation of Today's Fresh Start. In neither capacity was she charged with being an advocate or an adjudicator." (Id. at 223).

Similar to the facts underlying the decision in *Today's Fresh Start*, the RHNA appeals are not the type of "classic adversarial hearing with a prosecutor and defendant" which case law has held, in other contexts, requires a separation of functions between counsel prosecuting a matter and counsel advising a neutral decisionmaking body (i.e., with a prosecutor and defendant). In the present appeal (and all other appeals heard by the RHNA Appeals Board) the nature of the appeal (allocation of RHNA units based on statute and approved methodology) is not adversarial or prosecutorial, and, further, Ms. Chen did not present evidence, examine witness, or make specific arguments in favor of an outcome. While due process may be required to separate the function of "adversarial" or "prosecutorial" advocates from attorneys advising decisionmakers, separation of functions is not required when an attorney serves in an evaluative or advisory role in a non-adversarial or prosecutorial hearing, and (in that case) the same attorney may serve as advisor to both staff and the decisionmaker. The record demonstrates and the

RHNA Appeals Board specifically finds the facts demonstrate that Ms. Chen served in an evaluative and advisory role during the RHNA appeals process. As such, no due process violation occurred based on these facts.

V. Conclusion

For the foregoing reasons and based on the full record before the RHNA Appeals Board at the close of the public hearing (which the Board has taken into consideration in rendering its decision and conclusion), the RHNA Appeals Board hereby denies the City's appeal and finds that the City's RHNA allocation is consistent with the RHNA statute pursuant to Section 65584.05 (e)(1) as it was developed using SCAG's Final RHNA Methodology which was found by HCD to further the objectives set forth in Section 65584(d).

Reviewed and approved by RHNA Appeals Board this 16th day of February 2021.

EXHIBIT 6

SCAG 6TH CYCLE FINAL RHNA ALLOCATION PLAN (approved by HCD on 3/22/21 and modified on 7/1/21)*
 7/1/21

ALLOCATION BY COUNTY

	Total	Very-low income	Low income	Moderate income	Above moderate income
Imperial	15,993	4,671	2,357	2,198	6,767
Los Angeles	812,060	217,273	123,022	131,381	340,384
Orange	183,861	46,416	29,242	32,546	75,657
Riverside	167,351	41,995	26,473	29,167	69,716
San Bernardino	138,110	35,667	21,903	24,140	56,400
Ventura	24,452	5,774	3,810	4,525	10,343
TOTAL	1,341,827	351,796	206,807	223,957	559,267

ALLOCATION BY Regional Early Action Planning (REAP) SUBREGIONS

REAP Subregion	Total	Very-low income	Low income	Moderate income	Above moderate income
CVAG	31,619	6,204	4,664	5,561	15,190
Gateway Cities COG	71,678	20,029	10,391	10,822	30,436
Imperial County	15,993	4,671	2,357	2,198	6,767
Las Virgenes-Malibu COG	933	362	199	183	189
Los Angeles City	456,643	115,978	68,743	75,091	196,831
North Los Angeles County	15,663	4,001	2,129	2,332	7,201
Orange County COG	183,861	46,416	29,242	32,546	75,657
San Bernardino COG/SBCTA	138,110	35,667	21,903	24,140	56,400
San Fernando Valley COG	34,023	9,850	5,588	5,614	12,971
San Gabriel Valley COG	89,616	25,208	13,400	14,074	36,934
South Bay Cities COG	34,179	10,221	5,236	5,539	13,183
Uninc. Los Angeles County	90,052	25,648	13,691	14,180	36,533
Uninc. Riverside County	40,647	10,371	6,627	7,347	16,302
Ventura COG	24,452	5,774	3,810	4,525	10,343
Westside Cities COG	19,273	5,976	3,645	3,546	6,106
Western Riverside COG	95,085	25,420	15,182	16,259	38,224

ALLOCATION BY LOCAL JURISDICTION

County	Jurisdiction	Total	Very-low income	Low income	Moderate income	Above- moderate income
Imperial	Brawley city	1426	399	210	202	615
Imperial	Calexico city	4868	1279	655	614	2320
Imperial	Calipatria city	151	36	21	16	78
Imperial	El Centro city	3442	1001	490	462	1489
Imperial	Holtville city	171	41	33	26	71

ALLOCATION BY LOCAL JURISDICTION

County	Jurisdiction	Total	Very-low		Moderate	Above-
			income	Low income	income	moderate income
Imperial	Imperial city	1601	704	346	294	257
Imperial	Unincorporated Imp	4301	1203	596	580	1922
Imperial	Westmorland city	33	8	6	4	15
Los Angeles	Agoura Hills city	318	127	72	55	64
Los Angeles	Alhambra city	6825	1774	1036	1079	2936
Los Angeles	Arcadia city	3214	1102	570	605	937
Los Angeles	Artesia city	1069	312	168	128	461
Los Angeles	Avalon city	27	8	5	3	11
Los Angeles	Azusa city	2651	760	368	382	1141
Los Angeles	Baldwin Park city	2001	576	275	263	887
Los Angeles	Bell city	229	43	24	29	133
Los Angeles	Bell Gardens city	503	100	29	72	302
Los Angeles	Bellflower city	3735	1015	488	553	1679
Los Angeles	Beverly Hills city	3104	1008	680	602	814
Los Angeles	Bradbury city	41	16	9	9	7
Los Angeles	Burbank city	8772	2553	1418	1409	3392
Los Angeles	Calabasas city	354	132	71	70	81
Los Angeles	Carson city	5618	1770	913	875	2060
Los Angeles	Cerritos city	1908	679	345	332	552
Los Angeles	Claremont city	1711	556	310	297	548
Los Angeles	Commerce city	247	55	22	39	131
Los Angeles	Compton city	1004	235	121	131	517
Los Angeles	Covina city	1910	614	268	281	747
Los Angeles	Cudahy city	393	80	36	53	224
Los Angeles	Culver City city	3341	1108	604	560	1069
Los Angeles	Diamond Bar city	2521	844	434	437	806
Los Angeles	Downey city	6525	2079	946	915	2585
Los Angeles	Duarte city	888	269	145	137	337
Los Angeles	El Monte city	8502	1797	853	1233	4619
Los Angeles	El Segundo city	492	189	88	84	131
Los Angeles	Gardena city	5735	1485	761	894	2595
Los Angeles	Glendale city	13425	3439	2163	2249	5574
Los Angeles	Glendora city	2276	735	386	388	767
Los Angeles	Hawaiian Gardens ci	331	61	44	46	180
Los Angeles	Hawthorne city	1734	445	204	249	836
Los Angeles	Hermosa Beach city	558	232	127	106	93
Los Angeles	Hidden Hills city	40	17	8	9	6
Los Angeles	Huntington Park city	1605	264	196	243	902
Los Angeles	Industry city	17	6	4	2	5
Los Angeles	Inglewood city	7439	1813	955	1112	3559
Los Angeles	Irwindale city	119	36	11	17	55
Los Angeles	La Cañada Flintridge	612	252	135	139	86

ALLOCATION BY LOCAL JURISDICTION

County	Jurisdiction	Total	Very-low		Moderate	Above-
			income	Low income	income	moderate income
Los Angeles	La Habra Heights city	172	78	35	31	28
Los Angeles	La Mirada city	1962	634	342	320	666
Los Angeles	La Puente city	1929	544	275	275	835
Los Angeles	La Verne city	1346	414	239	223	470
Los Angeles	Lakewood city	3922	1296	637	653	1336
Los Angeles	Lancaster city	9023	2224	1194	1328	4277
Los Angeles	Lawndale city	2497	732	311	371	1083
Los Angeles	Lomita city	829	239	124	128	338
Los Angeles	Long Beach city	26502	7141	4047	4158	11156
Los Angeles	Los Angeles city	456643	115978	68743	75091	196831
Los Angeles	Lynwood city	1558	377	139	235	807
Los Angeles	Malibu city	79	28	19	17	15
Los Angeles	Manhattan Beach city	774	322	165	155	132
Los Angeles	Maywood city	365	55	47	55	208
Los Angeles	Monrovia city	1670	519	262	254	635
Los Angeles	Montebello city	5186	1314	707	777	2388
Los Angeles	Monterey Park city	5257	1324	822	848	2263
Los Angeles	Norwalk city	5034	1546	759	658	2071
Los Angeles	Palmdale city	6640	1777	935	1004	2924
Los Angeles	Palos Verdes Estates	199	82	44	48	25
Los Angeles	Paramount city	364	92	43	48	181
Los Angeles	Pasadena city	9429	2747	1662	1565	3455
Los Angeles	Pico Rivera city	1024	299	146	149	430
Los Angeles	Pomona city	10558	2799	1339	1510	4910
Los Angeles	Rancho Palos Verdes	639	253	139	125	122
Los Angeles	Redondo Beach city	2490	936	508	490	556
Los Angeles	Rolling Hills city	45	20	9	11	5
Los Angeles	Rolling Hills Estates city	191	82	42	38	29
Los Angeles	Rosemead city	4612	1154	638	686	2134
Los Angeles	San Dimas city	1248	384	220	206	438
Los Angeles	San Fernando city	1795	461	273	284	777
Los Angeles	San Gabriel city	3023	846	415	466	1296
Los Angeles	San Marino city	397	149	91	91	66
Los Angeles	Santa Clarita city	10031	3397	1734	1672	3228
Los Angeles	Santa Fe Springs city	952	253	159	152	388
Los Angeles	Santa Monica city	8895	2794	1672	1702	2727
Los Angeles	Sierra Madre city	204	79	39	35	51
Los Angeles	Signal Hill city	517	161	78	90	188
Los Angeles	South El Monte city	577	131	64	70	312
Los Angeles	South Gate city	8282	2136	994	1173	3979
Los Angeles	South Pasadena city	2067	757	398	334	578
Los Angeles	Temple City city	2186	630	350	369	837

ALLOCATION BY LOCAL JURISDICTION

County	Jurisdiction	Total	Very-low income	Low income	Moderate income	Above-moderate income
Los Angeles	Torrance city	4939	1621	846	853	1619
Los Angeles	Unincorporated Los	90052	25648	13691	14180	36533
Los Angeles	Vernon city	9	5	4	0	0
Los Angeles	Walnut city	1293	427	225	231	410
Los Angeles	West Covina city	5346	1653	850	865	1978
Los Angeles	West Hollywood city	3933	1066	689	682	1496
Los Angeles	Westlake Village city	142	58	29	32	23
Los Angeles	Whittier city	3439	1025	537	556	1321
Orange	Aliso Viejo city	1195	390	214	205	386
Orange	Anaheim city	17453	3767	2397	2945	8344
Orange	Brea city	2365	669	393	403	900
Orange	Buena Park city	8919	2119	1343	1573	3884
Orange	Costa Mesa city	11760	2919	1794	2088	4959
Orange	Cypress city	3936	1150	657	623	1506
Orange	Dana Point city	530	147	84	101	198
Orange	Fountain Valley city	4839	1307	786	834	1912
Orange	Fullerton city	13209	3198	1989	2271	5751
Orange	Garden Grove city	19168	4166	2801	3211	8990
Orange	Huntington Beach ci	13368	3661	2184	2308	5215
Orange	Irvine city	23610	6396	4235	4308	8671
Orange	La Habra city	804	192	116	130	366
Orange	La Palma city	802	224	140	137	301
Orange	Laguna Beach city	394	118	80	79	117
Orange	Laguna Hills city	1985	568	353	354	710
Orange	Laguna Niguel city	1207	348	202	223	434
Orange	Laguna Woods city	997	127	136	192	542
Orange	Lake Forest city	3236	956	543	559	1178
Orange	Los Alamitos city	769	194	119	145	311
Orange	Mission Viejo city	2217	674	401	397	745
Orange	Newport Beach city	4845	1456	930	1050	1409
Orange	Orange city	3936	1067	604	677	1588
Orange	Placentia city	4398	1243	680	782	1693
Orange	Rancho Santa Marga	680	209	120	125	226
Orange	San Clemente city	982	282	164	188	348
Orange	San Juan Capistrano	1054	270	173	183	428
Orange	Santa Ana city	3137	606	362	545	1624
Orange	Seal Beach city	1243	258	201	239	545
Orange	Stanton city	1231	165	145	231	690
Orange	Tustin city	6782	1724	1046	1132	2880
Orange	Unincorporated Ora	10340	3107	1866	2006	3361
Orange	Villa Park city	296	93	60	61	82
Orange	Westminster city	9759	1881	1473	1784	4621

ALLOCATION BY LOCAL JURISDICTION

County	Jurisdiction	Total	Very-low		Moderate	Above-
			income	Low income	income	moderate income
Orange	Yorba Linda city	2415	765	451	457	742
Riverside	Banning city	1673	317	193	280	883
Riverside	Beaumont city	4210	1229	721	723	1537
Riverside	Blythe city	494	82	71	96	245
Riverside	Calimesa city	2017	495	275	379	868
Riverside	Canyon Lake city	129	43	24	24	38
Riverside	Cathedral City city	2549	540	353	457	1199
Riverside	Coachella city	7886	1033	999	1367	4487
Riverside	Corona city	6088	1752	1040	1096	2200
Riverside	Desert Hot Springs c	3873	569	535	688	2081
Riverside	Eastvale City	3028	1145	672	635	576
Riverside	Hemet city	6466	812	732	1174	3748
Riverside	Indian Wells city	382	117	81	91	93
Riverside	Indio city	7812	1793	1170	1315	3534
Riverside	Jurupa Valley City	4497	1207	749	731	1810
Riverside	La Quinta city	1530	420	269	297	544
Riverside	Lake Elsinore city	6681	1878	1099	1134	2570
Riverside	Menifee city	6609	1761	1051	1106	2691
Riverside	Moreno Valley city	13627	3779	2051	2165	5632
Riverside	Murrieta city	3043	1009	583	545	906
Riverside	Norco city	454	145	85	82	142
Riverside	Palm Desert city	2790	675	460	461	1194
Riverside	Palm Springs city	2557	545	408	461	1143
Riverside	Perris city	7805	2030	1127	1274	3374
Riverside	Rancho Mirage city	1746	430	318	328	670
Riverside	Riverside city	18458	4861	3064	3139	7394
Riverside	San Jacinto city	3392	800	465	560	1567
Riverside	Temecula city	4193	1359	801	778	1255
Riverside	Unincorporated Rive	40647	10371	6627	7347	16302
Riverside	Wildomar city	2715	798	450	434	1033
San Bernardino	Adelanto city	3763	394	566	651	2152
San Bernardino	Apple Valley town	4290	1086	600	747	1857
San Bernardino	Barstow city	1520	172	228	300	820
San Bernardino	Big Bear Lake city	212	50	33	37	92
San Bernardino	Chino city	6978	2113	1284	1203	2378
San Bernardino	Chino Hills city	3729	1388	821	789	731
San Bernardino	Colton city	5434	1318	668	906	2542
San Bernardino	Fontana city	17519	5109	2950	3035	6425
San Bernardino	Grand Terrace city	630	189	92	106	243
San Bernardino	Hesperia city	8155	1921	1231	1409	3594
San Bernardino	Highland city	2513	619	409	471	1014
San Bernardino	Loma Linda city	2051	523	311	352	865

ALLOCATION BY LOCAL JURISDICTION

County	Jurisdiction	Total	Very-low income	Low income	Moderate income	Above-moderate income
San Bernardino	Montclair city	2593	698	383	399	1113
San Bernardino	Needles city	87	10	11	16	50
San Bernardino	Ontario city	20854	5640	3286	3329	8599
San Bernardino	Rancho Cucamonga	10525	3245	1920	2038	3322
San Bernardino	Redlands city	3516	967	615	652	1282
San Bernardino	Rialto city	8272	2218	1206	1371	3477
San Bernardino	San Bernardino city	8123	1415	1097	1448	4163
San Bernardino	Twentynine Palms ci	1047	231	127	185	504
San Bernardino	Unincorporated San	8832	2179	1360	1523	3770
San Bernardino	Upland city	5686	1584	959	1013	2130
San Bernardino	Victorville city	8165	1735	1136	1504	3790
San Bernardino	Yucaipa city	2866	708	493	511	1154
San Bernardino	Yucca Valley town	750	155	117	145	333
Ventura	Camarillo city	1376	353	244	271	508
Ventura	Fillmore city	415	73	61	72	209
Ventura	Moorpark city	1289	377	233	245	434
Ventura	Ojai city	53	13	9	10	21
Ventura	Oxnard city	8549	1840	1071	1538	4100
Ventura	Port Hueneme city	125	26	16	18	65
Ventura	San Buenaventura (\	5312	1187	865	950	2310
Ventura	Santa Paula city	657	102	99	121	335
Ventura	Simi Valley city	2793	749	493	518	1033
Ventura	Thousand Oaks city	2621	735	494	532	860
Ventura	Unincorporated Ven	1262	319	225	250	468

**The 6th Cycle RHNA Allocation Plan was approved by HCD on 3/22/21.*

conditions. This Plan includes a transfer from the County of Orange to the City of Santa Ana, which was approved by the SCAG Regional Council on 6/3/21, and a transfer from the County of Orange to the City of Placentia, which was approved on 7/1/21.

EXHIBIT 7

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



September 30, 2022

Ursula Luna-Reynosa, Director
Community Development Department
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Dear Ursula Luna-Reynosa:

RE: Huntington Beach's 6th Cycle (2021-2029) Revised Draft Housing Element

Thank you for submitting the City of Huntington Beach's (City) revised draft housing element update received for review on August 1, 2022, along with revisions received on September 23, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Conversations on September 7 and 22, 2022 with you and the housing element team facilitated the review.

The revised draft element, incorporating the additional revisions, meets the statutory requirements described in HCD's June 9, 2022 review. The housing element will comply with State Housing Element Law (Article 10.6 of the Gov. Code) when it is adopted, submitted to and approved by HCD, in accordance with Government Code section 65585.

For your information, pursuant to Senate Bill 197 (Chapter 70, Statutes of 2022), as the City did not adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021). As a result, the City's adopted element must be found in compliance by October 15, 2022 or HCD cannot find the element in compliance until programs to rezone (Program 2A (Adequate Sites) and Program 2B (Establish Affordable Housing Overlay Zone) are complete.

As a reminder, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the regional housing needs allocation (RHNA) for lower-income households, the housing element must demonstrate that existing uses are not an impediment to additional residential development in the planning period. This can be demonstrated by providing substantial evidence that the existing use is likely to be discontinued during the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings in an adoption resolution based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized

Ursula Luna-Reynosa, Director
Page 2

toward demonstrating adequate sites to accommodate the regional housing need allocation (RHNA).

In addition, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions.

HCD understands the City made revisions available on September 23, 2022 for seven days prior to submitting to HCD. While this meets the requirement per AB 215 (Chapter 342, Statutes of 2021), public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

HCD appreciates the hard work, responsiveness, and dedication the housing element team provided in preparation of the City's housing element and looks forward to receiving the City's adopted housing element. If you have any questions or need additional technical assistance, please contact Jose Ayala, of our staff, at Jose.Ayala@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

CERTIFICATE OF SERVICE

Case Name: **City of Huntington Beach, et al.** CaseNo. **8:23-cv-00421**
v. Gavin Newsom, et al.

I hereby certify that on May 1, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMISS**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 1, 2023, at Los Angeles, California.

D. Arana
Declarant



Signature

1 ROB BONTA
 Attorney General of California
 2 DANIEL A. OLIVAS
 Senior Assistant Attorney General
 3 DAVID PAI, Bar No. 227058
 Supervising Deputy Attorney General
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9 *Attorneys for Defendants Gavin Newsom, in his*
official capacity as Governor of the State of
 10 *California, and individually; Gustavo Velasquez, in*
his official capacity as Director of the State of
 11 *California Department of Housing and Community*
Development, and individually; and the California
 12 *Department of Housing and Community*
 13 *Development*

14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 16 SOUTHERN DIVISION
 17

18 **CITY OF HUNTINGTON BEACH, a**
 19 **California Charter City, and**
 20 **Municipal Corporation, the**
 21 **HUNTINGTON BEACH CITY**
 22 **COUNCIL, MAYOR OF**
 23 **HUNTINGTON BEACH, TONY**
 24 **STRICKLAND, and MAYOR PRO**
 25 **TEM OF HUNTINGTON BEACH,**
 26 **GRACEY VAN DER MARK,**
 27
 28 Plaintiffs,
 v.
GAVIN NEWSOM, in his official
capacity as Governor of the State of

8:23-cv-00421-FWS-ADS

**[PROPOSED] ORDER GRANTING
 STATE DEFENDANTS' MOTION
 TO DISMISS AND REQUEST FOR
 JUDICIAL NOTICE**

Date: July 27, 2023
 Time: 10:00 a.m.
 Courtroom: 10D
 Judge: The Honorable Fred W. Slaughter

Trial Date: None Set
 Action Filed: 3/09/2023

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**California, and individually;
GUSTAVO VELASQUEZ in his
official capacity as Director of the
State of California Department of
Housing and Community
Development, and individually;
STATE LEGISLATURE; STATE OF
CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT; SOUTHERN
CALIFORNIA ASSOCIATION OF
GOVERNMENTS; and DOES 1-50,
inclusive,**

Defendants.

1 Having considered the Motion to Dismiss, the Request for Judicial Notice, and
2 the exhibits attached thereto filed by Defendants Governor Gavin Newsom,
3 Director Gustavo Velasquez, and the California Department of Housing and
4 Community Developments (the “State Defendants”), and having considered all
5 other documents on file in this action, and for good cause shown, the Court hereby
6 GRANTS the State Defendant’s Request for Judicial Notice and GRANTS the
7 State Defendants’ Motion to Dismiss.

8 Plaintiff City of Huntington Beach does not have standing to sue the State
9 Defendants in federal court. *City of S. Lake Tahoe v. California Tahoe Reg’l Plan.*
10 *Agency*, 625 F.2d 231, 233–34 (9th Cir. 1980). Plaintiffs Huntington Beach City
11 Council, Mayor of Huntington Beach Tony Strickland, and Mayor Pro Tem of
12 Huntington Beach Gracey van der Mark do not assert interests separate from the
13 City itself, and thus also lack standing. *Id.* at 237. This Court lacks subject matter
14 jurisdiction over this case and, therefore, must dismiss all of Plaintiffs’ claims.
15 *Scott v. Pasadena Unified School Dist.*, 306 F.3d 646, 664 (9th Cir. 2002).

16 Separately, the Court finds that it should abstain from hearing Plaintiffs’
17 claims under the doctrine of *Younger v. Harris*. Specifically, factually-related state
18 court proceedings are (1) ongoing; (2) implicate important state interests; and (3)
19 provide adequate opportunity for Plaintiffs to raise their federal claims in this case
20 as defenses. *Younger v. Harris*, 401 U.S. 37 (1971); *Middlesex County Ethics*
21 *Committee v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982). In addition,
22 *Younger* abstention is appropriate because Plaintiffs’ requested relief would have
23 the practical effect of enjoining ongoing state court proceedings. *ReadyLink*
24 *Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014).

25 The Court also finds that the Eleventh Amendment bars Plaintiffs from
26 bringing their claims based on alleged violations of state law against the State
27 Defendants in federal court. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S.
28 89, 99-100 (1984). In addition, Defendants Governor Gavin Newsom and the

1 California Department of Housing and Community Development are immune from
2 suit on *any* claim, state or federal, brought in this Court. *Ass'n des Eleveurs de*
3 *Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013); *City of*
4 *San Juan Capistrano v. California Pub. Utilities Comm'n*, 937 F.3d 1278, 1280 (9th
5 Cir. 2019).

6 The Court also finds that, even if Plaintiffs' claims were justiciable before it,
7 those claims would fail on the merits:

- 8 • Plaintiffs have not alleged a viable First Amendment claim because
9 California's housing laws do not burden or compel protected speech and
10 because legislators do not have a protectable First Amendment interest in
11 casting votes. *Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117 (2011).
- 12 • Plaintiffs have not alleged a viable procedural due process claim under the
13 Fourteenth Amendment because they have not alleged a private liberty or
14 property interest and cannot allege that adequate procedural protections
15 were denied to them during the Regional Housing Needs Allocation
16 process. *Buckingham v. Sec'y of U.S. Dep't of Agr.*, 603 F.3d 1073, 1082–
17 83 (9th Cir. 2010); *City of Los Angeles v. David*, 538 U.S. 715, 716 (2003).
- 18 • Plaintiffs have not alleged a viable substantive due process claim under the
19 Fourteenth Amendment because control over zoning is not a protected
20 fundamental liberty interest and because Plaintiffs have not alleged any
21 facts that would support scrutiny of California's housing laws beyond
22 "rational basis." *Franceschi v. Yee*, 887 F.3d 927, 937 (9th Cir. 2018).
- 23 • Plaintiffs have not alleged a viable dormant Commerce Clause claim
24 because California's housing laws do not regulate, discriminate against, or
25 excessively burden interstate commerce. *Nat'l Ass'n of Optometrists &*
26 *Opticians v. Harris*, 682 F.3d 1144, 1148 (9th Cir. 2012).

27 Finally, the Court finds that, even if it possessed subject matter jurisdiction
28 over the state claims and those claims were not also barred by the Eleventh

1 Amendment, this Court would decline to exercise jurisdiction over the state claims
2 because they predominate over the federal claims in this case and the exercise of
3 jurisdiction over Plaintiffs' declaratory relief claims is not warranted. 28 U.S.C. §
4 1367(c)(2); *Gov't Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1224 (9th Cir. 1998)
5 (en banc).

6 For these reasons, the Court HEREBY ORDERS that the State Defendants'
7 Motion to Dismiss is GRANTED in its entirety.

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9 Dated: _____

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Hon. Fred W. Slaughter
United States District Judge

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