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10 of California ex rel. Rob Bonta, and the California
Department of Housing and Community
11 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
DEPARTMENT OF HOUSING AND
17 COMMUNITY DEVELOPMENT,**

18 Petitioners and Plaintiffs,

19 v.

20 **THE CITY OF HUNTINGTON BEACH, A
21 MUNICIPAL CORPORATION; CITY
COUNCIL OF HUNTINGTON BEACH;
22 AL ZELINKA, in his official capacity as
CITY MANAGER OF HUNTINGTON
23 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
26 AMENDED PETITION AND
27 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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1 **INTRODUCTION**

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

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

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

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

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,
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