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COURT OF APPEAL OF THE STATE OF CALIFORNIA,

FIRST APPELLATE DISTRICT

**SAN FRANCISCO BAY AREA RENTERS
FEDERATION, ET AL.,**

Petitioners/Appellants,

v.

CITY OF SAN MATEO, ET AL.,

Respondents/Respondents

Case No. A159320¹

(San Mateo County Superior
Court Case No. 18-CIV-
02105)

**NOTICE OF
INTERVENTION (UNDER
CODE OF CIVIL
PROCEDURE SECTION
902.1)**

¹ Manual filing notification: under Local Rule 12, subdivision (i), a manual (instead of an electronic) filing is being made here, because it is not possible presently to make an electronic filing. This Court assigned a case number for this appeal for the first time today, but that number has not yet been input into the Court's e-filing system, precluding electronic filing.

Please take NOTICE that, under Code of Civil Procedure section 902.1, Xavier Becerra, in his official capacity as Attorney General of California, hereby intervenes in the above-entitled appeal.

FACT AND POLICY BACKGROUND

In 1982, the Legislature first enacted the Housing Accountability Act, Government Code section 65589.5, because “[t]he lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.” (*Id.*, § 65589.5, subd. (a)(1)(A).) “The excessive cost of the state’s housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.” (*Id.*, § 65589.5, subd. (a)(1)(B).) “Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.” (*Id.*, § 65589.5, subd. (a)(1)(C).)

Since then, the Legislature has amended the Housing Accountability Act several times, because:

California has a housing supply and affordability crisis of historic proportions. 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. (Gov. Code, § 65589.5, subd. (a)(2)(A).) “The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply,

and protracted unaffordability.” (*Id.*, § 65589.5, subd. (a)(2)(C).) “Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.” (*Id.*, § 65589.5, subd. (a)(2)(F).) “When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.” (*Id.*, § 65589.5, subd. (a)(2)(H).)

Accordingly, under the Housing Accountability Act, “[i]t is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action” (Gov. Code, § 65589.5, subd. (b).)

Last week, in connection with submitting the 2020-21 Governor’s Budget, Governor Gavin Newsom stated:

The state’s affordability crisis continues to threaten working families who are burdened by the [...] sky-high cost of housing and rent. Last year, the state [...] approved the strongest renter protection law in the nation, [...] while investing in affordable housing production efforts. ... Building on the state’s new renter protection law and unprecedented \$1.75 billion investment in last year’s budget to increase housing supply and hold cities accountable for regional housing goals, this year’s [b]udget authorizes \$500 million annually for the state’s housing tax credit program and continues to support housing development on excess state lands. In addition, the Administration is streamlining state processes to accelerate housing production. Finally, the Administration continues to work to establish a trust

with \$331 million that will provide borrower relief and support housing counselors or other legal aid agencies in representing homeowners and renters in housing-related matters.

(Gov. Gavin Newsom, *Governor Newsom Proposes 2020-21 State Budget* [Jan. 10, 2020], available online at <https://www.gov.ca.gov/2020/01/10/governor-newsom-proposes-2020-21-state-budget/> [last visited Jan. 12, 2020].)

CASE BACKGROUND

Following a contested motion for a writ of mandate, and by an order dated November 7, 2019, the court below held, under the California Constitution, article XI, sections 5 and 11, that the Housing Accountability Act is unenforceable against a charter city: “[T]his court finds that to [sic] the HAA is unenforceable to the extent that HAA conflicts with or purports to disregard otherwise enforceable portions of the city’s Municipal Code regarding review of housing development projects.” (*Id.*, 5:17-5:19.) “This court finds that, in addition to violating the home rule doctrine discussed above, [the HAA] would effect an unlawful delegation of municipal functions to private parties in violation of California Constitution Article XI, § 11(a)...” (*Id.*, 6:24-6:27.) “The court finds that the HAA in general and Government Code § 65589.5(f)(4) in particular constitute a significant and unnecessary interference in municipal governance and that [sic] cannot possibly be construed as ‘narrowly tailored’ and, therefore, is [sic] unenforceable.” (*Id.*, 8:11-8:14.)

On December 4, 2019, the court below filed its final judgment, which adhered to and included as an exhibit a copy of the November 7, 2019, order.

On January 10, 2020, Petitioners California Renters Legal Advocacy and Education Fund, Victoria Fierce, and John Moon filed a notice of appeal herein. A copy of that notice is submitted herewith, as Exhibit A.

LEGAL STANDARD FOR INTERVENTION

Code of Civil Procedure section 902.1 states as follows:

In any case in which a notice was required pursuant to subdivision (e) of Section 664.5, the Attorney General shall have the right to intervene and participate in any appeal taken therefrom. These rights shall apply regardless of whether the Attorney General participated in the case in the trial court.

However, the Attorney General has no direct right to appeal. If the Attorney General elects not to intervene and participate in the appeal, he or she shall file a statement with the Legislature and the Judicial Council stating the reason or reasons for the decision not to intervene and participate in the appeal. This statement may be in the form of an annual report to the Legislature and Judicial Council and that report shall be a matter of public record.

Code of Civil Procedure section 664.5, subdivision (e) (referenced above), states as follows: “The Judicial Council shall provide by rule of court that, upon entry of judgment in a contested action or special proceeding in which a state statute or regulation has been declared unconstitutional by the court, the Attorney General is promptly notified of the judgment and that a certificate of that service is placed in the court’s file in the cause.”

DISCUSSION OF INTERVENTION

As recognized in the above-cited statutory findings and budget-related pronouncements of Governor Newsom, housing policy has far-reaching impacts statewide. Both Governor Newsom and Attorney General Becerra monitored the litigation below, and have serious concerns about the lower court’s ruling invalidating the Housing Accountability Act on constitutional grounds.

The lower court has incorporated that substantive ruling into a final judgment, and Petitioners have filed a notice of appeal. Under Code of Civil Procedure section 902.1, because (1) the lower court, in the present contested case, entered a judgment invalidating a state law, the Housing Accountability Act, as unconstitutional, and (2) an appeal of that judgment has been taken by one of the parties, Petitioners, the Attorney General now has a right to intervene and participate in the appeal, to protect the interests of California and the people of California. By this notice, that right of intervention is being exercised. The Attorney General looks forward to participating in all aspects of this appeal, as an intervener.

Dated: January 13, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California



JONATHAN M. EISENBERG
Deputy Attorney General
*Attorneys for Intervener Xavier Becerra,
Attorney General of California*

EXHIBIT A

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Education Fund, Victoria Fierce, and John Moon

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FILED
by Superior Court of California, County of San Mateo
ON 1/10/2020 2:37 PM
By /s/ Russell Brown
Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8
9 COUNTY OF SAN MATEO – UNLIMITED JURISDICTION

10 SAN FRANCISCO BAY AREA RENTERS
FEDERATION, CALIFORNIA RENTERS
11 LEGAL ADVOCACY AND EDUCATION
FUND, VICTORIA FIERCE, and JOHN MOON,

CASE NO. 18CIV02105

NOTICE OF APPEAL OF ORDER

12 Petitioners,

13 vs.

14
15 CITY OF SAN MATEO, SAN MATEO CITY
COUNCIL, and CITY OF SAN MATEO
16 PLANNING COMMISSION,

17 Respondents,

18 TONY MEHMET GUNDOGDU and AYNUR V.
19 GUNDOGDU,

20 Real Parties in Interest.

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NOTICE OF APPEAL

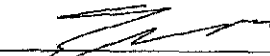
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1 / PETITIONERS CALIFORNIA RENTERS AND LEGAL ADVOCACY AND EDUCATION
2 FUND, VICTORIA FIERCE, AND JOHN MOON (collectively, "Petitioners") hereby appeal to the
3 Court of Appeal of the State of California, First Appellate District, from the Order Denying Petitioners'
4 Writ of Administrative Mandamus entered on November 7, 2019, in the San Mateo Superior Court,
5 and notice of entry of which was filed by Respondents on November 14, 2019. A copy of this order
6 is attached as Exhibit A.

7 Dated: January 10, 2020

ZACKS, FREEDMAN & PATTERSON, PC

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Emily L. Brough
Attorney for Petitioners
CALIFORNIA RENTERS LEGAL
ADVOCACY AND EDUCATION
FUND, VICTORIA FIERCE, and
JOHN MOON

NOTICE OF APPEAL

EXHIBIT A

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[Exempt from Filing Fee (Gov. Code § 6103)]

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11 Attorneys for Respondents
12 CITY OF SAN MATEO, SAN MATEO CITY
13 COUNCIL, and CITY OF SAN MATEO
14 PLANNING COMMISSION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO, UNLIMITED JURISDICTION

16 SAN FRANCISCO BAY AREA RENTERS
17 FEDERATION, CALIFORNIA RENTERS LEGAL
18 ADVOCACY AND EDUCATION FUND,
19 VICTORIA FIERCE AND JOHN MOON,

Case No.: 18-CIV-02105

Petitioner,

NOTICE OF ENTRY OF ORDER

vs.

21 CITY OF SAN MATEO, SAN MATEO CITY
22 COUNCIL, AND CITY OF SAN MATEO
23 PLANNING COMMISSION,

Action Filed: April 26, 2017

Respondents.

24 TONY MEHMET GUNDOGDU and AYNUR V.
25 GUNDOGDU,

Real Parties in Interest.

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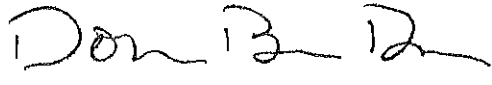
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that an Order Denying Petition for Writ of Administrative
Mandate was filed in this action on November 7, 2019. A copy of the Order is attached as
Exhibit A.

DATED: November 13, 2019 GOLDFARB & LIPMAN LLP

By: 
DOLORES BASTIAN DALTON
Attorneys for Respondents
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COUNCIL, AND CITY OF SAN MATEO
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EXHIBIT A

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FILED
SAN MATEO COUNTY

NOV 07 2019

Clerk of the Superior Court
Blaine Bards
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

San Francisco Bay Area Renters	}	Case No.: 18-CIV-02105
Federation, California Renters Legal		Order Denying Petition for Writ of
Advocacy and Education Fund, Victoria		Administrative Mandate
Fierce and John Moon		
Petitioners		
v.		Date: October 24, 2019
City of San Mateo and City of San		Time: 2:00 P.M.
Mateo Planning Commission		Dept: 28
Respondents		Hon. George A. Miram

The Petition for Writ of Administrative Mandate brought by San Francisco Bay Area Renters Federation, California Renters Legal Advocacy and Education Fund, Victoria Fierce and John Moon came on regularly for hearing at 2:00 P.M. on October 24, 2019 in Department 28 of the San Mateo Superior Court, the Hon. George A. Miram presiding.

Ryan J. Patterson, Esq. and James B. Kraus, Esq. of Zacks, Freedman & Patterson, PC appeared on behalf of Petitioners. Barbara E. Kautz, Esq. and Dolores Bastian Dalton, Esq. appeared on behalf of the City of San Mateo City Council and the City of San Mateo Planning Commission.

1 After receiving the papers filed by the parties, hearing the oral arguments of
2 counsel, and after the court granted all requests for judicial notice, the matter was
3 submitted.

4 The City of San Mateo bases its opposition to the Petition for Writ of
5 Mandate on two grounds: (1) a finding that the project violated the City's Multi-
6 Family Design Guidelines requiring upper floors of a project that exceeds the
7 height of neighboring structures be stepped back to avoid changes in building
8 height greater than one story, a finding that was expressly included in the City's
9 denial resolution; and (2) the failure of the project to comply with City's parking
10 standards, a grounds for denial that was not addressed in the denial resolution.
11 Since the denial resolution did not include any findings concerning the alleged
12 failure to comply with parking standards, the matter must be remanded to the City
13 so that such findings can be made *unless* this court finds that the findings that the
14 project violated the City's Multi-Family Design Guidelines comply with the
15 enforceable provisions of the Housing Accountability Act, Government Code §
16 65589.5 et seq. (hereafter "HAA"), and is, by itself, an appropriate grounds for
17 Denial of the project by the San Mateo Planning Commission, Denial of the
18 Appeal of such denial by the City of San Mateo City Council, and Denial of this
19 Petition for Writ of Administrative Mandate by this court.

20 Thus, the issue before this court is whether the finding that the project
21 violated the City's Multi-Family Design Guidelines requiring upper floors of a
22 project that exceeds the height of neighboring structures be stepped back to avoid
23 changes in building height greater than one story satisfies the HAA, and if not,
24 whether any provisions of the HAA that are not satisfied are enforceable.

25 Petitioner contends that "the City bears the burden of proving that the
26 Project failed to comply with "applicable, objective general plan and zoning
27 standards and criteria, including design review standards, in effect at the time that
28 the housing development project's application was determined to be complete."

1 (Petitioner's Opening Brief at 6:11-14 [quoting *Honchariw v. County of Stanislaus*
2 (2011) 200 Cal.App.4th 1066, 1081.]) Petitioner contends that the Multi-Family
3 Design Guidelines (hereafter "MFDGs") are not applicable objective general plan,
4 zoning or subdivision standards or criteria, and therefore denial of a project due to
5 any failure of the project to satisfy the guidelines violates the HAA. (Petitioner's
6 Opening Brief at 10:18-11:14.) Respondent contends that "The City Council
7 interpreted the standard to mean that all floors of a proposed building that
8 exceeded the height of a neighboring structure needed to be stepped back" and
9 "Because the project did not comply, the Council denied the project."
10 (Respondent's Supplemental Brief at 13:2-4 [citing Administrative Record at 28-
11 31].) Respondent contends that the interpretation of MFDGs standard is an issue
12 of pure law and that the city's interpretation of its own ordinance is entitled to
13 great weight. (Respondent's Supplemental Brief at 13:5-8 [quoting *Harrington v.*
14 *City of Davis* (2017) 16 Cal.App.5th 420, 434 and citing *Ocean Park Associates v.*
15 *Santa Monica Rent Control Bd.* (2004) 114 Cal.App.4th 1050, 1062; *Yamaha Corp.*
16 *v. State Bd. Of Equilzation* (1998) 19 Cal.4th 1].) Respondent contends that such
17 threshold legal issues should be decided by this court under the independent
18 judgment standard. (Respondent's Supplemental Brief at 11:9-10.)

19 Exercising its independent judgment, and giving difference to the city's
20 interpretation of its own Multi-Family Design Guidelines, this court finds that the
21 Multi-Family Design Guidelines qualify as "applicable, objective general plan and
22 zoning standards and criteria, including design review standards, in effect at the
23 time that the housing development project's application was determined to be
24 complete." (*Honchariw v. County of Sanislaus* (2011) 200 Cal.App.4th 1066,
25 1081.) This court finds this issue to be an issue of pure law and that the
26 reasonable interpretation/substantial evidence standard provided in Government
27 Code § 65589.5(f)(4) does not apply to this court's determination of this specific
28 legal issue.

1 Accordingly, the Petition for Writ of Mandate is DENIED because the city
2 did not violate the HAA when it denied approval of the project because the project
3 failed to satisfy the Multi-Family Design Guidelines, as interpreted by the city and
4 confirmed by this court in the exercise of its independent judgment.

5 Petitioners contend that the HAA effectively precludes the use of
6 discretionary guidelines to deny residential housing development project permits,
7 because such guidelines are not objective standards. (Petitioners Supplemental
8 Brief at page 2:24-26 [citing Government Code § 65589.5(j)(1); *Honchariw v.*
9 *County of Sanislaus* (2011) 200 Cal.App.4th 1066, 1076 [HAA takes “away an
10 agencies ability to use what might be called a ‘subjective’ development ‘policy’
11 (for example ‘suitability’ to exempt a proposed housing project from the reach of
12 subdivision (j)’].]) Petitioners note that in January 2000, subdivision (j) was
13 changed from “[w]hen a proposed housing development project complies with the
14 applicable general plan, zoning and development polices in effect” to include
15 “objective...standards and criteria.” (Petitioners Supplemental brief at 11: 16-22.)

16 Petitioners contend that the MFDGs are not applicable objective general
17 plan, zoning or subdivision standards. First, Petitioners contend that a design
18 review standard can only be used to deny a project if it is included in an applicable
19 General Plan, zoning code or subdivision code and the MFDGs are not
20 incorporated into San Mateo’s General Plan or Codes, but were adopted as separate
21 guidelines. (Petitioners Opening Brief at page 10:23-11:03.) Second, Petitioners
22 contend that the MFDGs are discretionary, and as discussed above, argue that
23 discretionary guidelines may not be used to deny a project to which the HAA
24 applies: (Id. at 11:04-07.) Petitioners note that the City’s Urban Design Policy
25 simply recommends that projects “substantially conform” to the MFDGS; they are
26 not a mandatory checklist. (Id. at 11:09-14 [citing U.D. 2.1].)

27 Respondents contend that such a sweeping negation of local agency
28 discretion interferes with core municipal decision-making ability and violates the

1 home rule doctrine contained in Article XI, § 5(a) of the California Constitution.
2 (Respondent's Supplemental Brief at page 14:25-27.) While *Honchariw v. County*
3 *of Sanislaus* (2011) 200 Cal.App.4th 1066, 1076 held that the HAA takes "away an
4 agency's ability to use what might be called a 'subjective' development 'policy,'
5 that court did not address the argument raised here that the HAA is a legislative
6 attempt to interfere with core municipal decision-making ability that violates the
7 California Constitution.

8 While this court expressly ordered the parties to brief the enforceability of
9 the HAA and specifically Government Code § 65589.5(f)(4), Petitioners provided
10 no such briefing and provided no argument or citation to authority during oral
11 argument. Thus, the contentions concerning the enforceability of the HAA in
12 general and Government Code § 65589.5(f)(4) in particular proffered by
13 Respondent City of San Mateo are uncontroverted.

14 This court finds that the City of San Mateo is a charter city whose charter
15 fully incorporates the home rule doctrine and that the approval of the instant
16 residential housing project is an appropriate exercise of municipal affairs.
17 Furthermore, this court finds that the HAA is unenforceable to the extent the
18 HAA conflicts with or purports to disregard otherwise enforceable portions of the
19 city's Municipal Code regarding review of housing development projects. (See
20 *State Building & Construction Trades Council of California v. City of Vista* (2012)
21 54 Cal.4th 547, 555 ["charter cities are specifically authorized by our state
22 Constitution to govern themselves, free of state legislative intrusion, as to those
23 matters deemed municipal affairs".])

24 This court finds that planning and zoning activities of local government are a
25 classic municipal affair. "Land use regulation in California has historically been a
26 function of local government under the grant of police power contained in
27 California Constitution article XI, section 7." *DeVita v. County of Napa* (1995) 9
28 Cal.4th 763, 782 [quoting *Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875,

1 879].) “We have recognized that a city’s or county’s power to control its own land
2 use decisions derives from this inherent police power, not from the delegation of
3 authority by the state.” (*Id.* [*Candid Enterprises, Inc. v. Grossmont Union High*
4 *Dist.* (1985) 39 Cal.3d 878, 885-886].)

5 Although the HAA states in Government Code § 65589.5(g) that it applies to
6 charter cities, the Legislature’s view of whether its enactment should apply to
7 charter cities does not control. *State Building & Construction Trades Council of*
8 *California v. City of Vista* (2012) 54 Cal.4th 547, 565 [citing *Bishop v. City of San*
9 *Jose* (1969) 1 Cal.3d 56, 63 [“The legislature is empowered neither to determine
10 what constitutes a municipal affair nor to change such an affair into a matter of
11 statewide concern”].)

12 Petitioner contends that “In an HAA case, the Petitioners are afforded the
13 benefit of the doubt, and the Court cannot independently weigh the evidence or
14 engage in a balancing exercise. Rather any conflicts must be resolved in favor of
15 the Petitioners and if there is *any* substantial evidence in the record that would
16 enable a reasonable person to conclude the Project is code compliant, it must be
17 deemed compliant and approved. Substantial evidence can and must include the
18 findings of the City’s expert consultants, the reports prepared by City staff, and the
19 evidence submitted by the project applicant.” (Petitioner’s Reply Brief at 4:12-17.)
20 Petitioner contends: “it is absurd for the City to suggest that the City Council is the
21 final arbiter of code compliance and that nothing that occurred before the City’s
22 final decision can be cited in an HAA action.” (*Id.* at 4:20-24.)

23 Assuming without finding that the above quoted language correctly
24 interprets the plain language of the HAA, this court finds that, in addition to
25 violating the home rule doctrine discussed above, such interpretation would effect
26 an unlawful delegation of municipal functions to private parties in violation of
27 California Constitution Article XI, § 11(a) [“Legislature may not delegate to a
28 private person or body power...to perform municipal functions”] and, therefore,

1 that the interpretation of the HAA proffered by Petitioner would be unenforceable.
2 Here, Petitioners argue that the opinions of the City's design consultant and City
3 Staff—prepared and submitted prior to any public hearing by persons not
4 designated by the Municipal to make decisions—constitute “substantial evidence”
5 and compels approval of the project regardless of the views of the City Council to
6 the contrary. Petitioners suggest that the comments by one Councilmember may
7 compel the entire Council to approve the project thereby nullifying the idea of
8 majority decision making. (See Petitioner's Opening Brief at page 8:19-24.) This
9 court finds that such limitations on the ability of a Charter City Council to approve
10 or deny an action by majority vote constitutes an unlawful delegation of authority
11 and is, therefore, unenforceable.

12 As noted above, California court have “recognized that a city's or county's
13 power to control its own land use decisions derives from this inherent police
14 power, not from the delegation of authority by the state.” (*Id.* [*Candid Enterprises,*
15 *Inc. v. Grossmont Union High Dist.* (1985) 39 Cal.3d 878, 885-886].) Thus, while
16 authority delegated by statute can be revoked by statute, limitations on the inherent
17 police power of a city narrowly tailored to avoid unnecessary interference in
18 municipal governance. (*Johnson v. Bradley* (1992) 4 Cal.4th 389, 476-477;
19 *Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750, 765; *Jauregui v. City of*
20 *Palmdale* (2014) 226 Cal.App.4th 781, 802.)

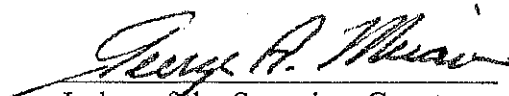
21 Respondent contends that even assuming *arguendo* that Government Code §
22 65589.5(f)(4) addresses a matter of statewide concern, nothing about the HAA is
23 “narrowly tailored” to avoid unnecessary interference in municipal governance.
24 The HAA is not limited to cities and counties that have a history of denying
25 housing developments. The HAA does not apply to larger projects that may have a
26 significant effect on housing availability but instead applies to any housing
27 development projected containing two units or more and even applies to projects
28 having a substantial commercial component. (Respondent's Supplemental Brief at

1 19:1-6 [citing Government Code § 65589.5(h)(2).] Respondents contend that the
2 HAA effectively replaces all findings related to housing development approvals
3 with one related to consistency with objective standards. (*Id.*) As noted above, this
4 court expressly ordered the parties to brief the enforceability of the HAA and
5 specifically Government Code § 65589.5(f)(4), Petitioners provided no such
6 briefing and provided no argument or citation to authority concerning this issue
7 during oral argument. Thus, the concerning the failure of Government Code §
8 65589.5(f)(4) to qualify as a narrowly tailored to avoid unnecessary interference in
9 municipal governance proffered by Respondent City of San Mateo are
10 uncontroverted.

11 This court finds that the HAA in general and Government Code §
12 65589.5(f)(4) in particular constitute a significant and unnecessary interference in
13 municipal governance and that cannot possibly be construed as “narrowly tailored”
14 and, therefore, is unenforceable. For example, a narrowly tailored version of the
15 HAA would limit the statute’s application to cases in which the administrative
16 record contained objective evidence of bad faith by the municipal authority. Here,
17 there is no evidence that the City of San Mateo has ever acted in bad faith and the
18 fact that city employees and city council members recognized the positive aspects
19 of a project, as well as its defects, does not mean that their ultimate decision to
20 deny the application was made in bad faith.

21 Project criteria contained in city ordinances enacted when the exercise of
22 discretion was permitted must necessarily be reevaluated and modified if sweeping
23 changes to the law that prohibit all discretion are enacted and become enforceable.
24 It is not bad faith for a city to attempt to retain the standards it has applied in the
25 past if there is no evidence of prior bad faith. Accordingly, the Petition for Writ of
26 Mandate is DENIED.

27 Dated: NOV 07 2019

28 
Judge of the Superior Court



SUPERIOR COURT OF SAN MATEO COUNTY
400 County Center, Redwood City, CA 94063
(650) 261-5100
www.sanmateocourt.org

ENDORSED FILED
SAN MATEO COUNTY

NOV 07 2019

Clerk of the Superior Court
By DORIE BONAL
DEPUTY CLERK

AFFIDAVIT OF MAILING

Date: 11/7/2019

In the Matter of: SAN FRANCISCO BAY AREA RENTERS FEDERATION, et al vs. CITY OF SAN MATEO, et al
Case No.: 18-CIV-02105A

I declare under penalty of perjury that on the following date I deposited in the United States Post Office mail box at Redwood City, a true copy of the attached document(s) Order Denying Petition for Writ of Administrative Mandate, enclosed in an envelope, with proper and necessary postage thereon, and addressed to the following:

Executed on: 11/7/2019

Neal I Taniguchi, Court Executive Officer/Clerk

By: DORIE BONAL
Dorie Bonal, Courtroom Clerk
To The Honorable George A. MIRAM

Copies Mailed To:

RYAN J. PATTERSON
ZACKS FREEDMAN & PATTERSON PC
235 MONTGOMERY STREET
STE 400
SAN FRANCISCO CA 94104

BARBARA E. KAUTZ
GOLDFARB & LIPMAN LLP
1300 CLAY STREET
ELEVENTH FLOOR
OAKLAND CA 94612

1 PROOF OF SERVICE

2 *San Francisco Bay Area Renters Federation, et al. v. City of San Mateo, et al.*
3 San Mateo Superior Court Case No.: 18-CIV-02105

4 I, Konni S. Stalica, certify and declare as follows:

5 I am over the age of 18 years, and not a party to this action. My business address is
6 1300 Clay Street, Eleventh Floor, City Center Plaza, Oakland, California 94612. My email
7 address is kstalica@goldfarbblipman.com. On November 14, 2019, I served the document(s)
8 described as **NOTICE OF ENTRY OF ORDER** on the interested parties in this action as
9 follows:

8 Ryan J. Patterson
9 Sarah M.K. Hoffman
10 Zacks, Freedman & Patterson, PC
11 235 Montgomery Street, Suite 400
12 San Francisco, CA 94104
13 Tel: (415) 956-8100
14 Fax: (415) 288-9755
15 ryan@zfplaw.com

V. Winnie Tungpagasit, Esq.
Finkelstein Bender & Fujii LLP
1528 S. El Camino Real, Suite 306
San Mateo, CA 94402
Tel: (650) 353-4503, Ext. 112
Fax: (650) 312-1803
wtungpagasit@dgflaw.com

12 Attorneys for Petitioners
13 San Francisco Bay Area Renters
14 Federation, California Renters Legal
15 Advocacy and Education Fund,
16 Victoria Fierce, and John Moon

Attorneys for Real Parties in Interest
Tony Mehmet Gundogdu and Aynur V.
Gundogdu

16 BY E-MAIL: I caused a copy of the above-listed document(s) to be sent from my
17 Goldfarb & Lipman email address to the persons at the email addresses listed on the
18 service list.

19 BY ELECTRONIC SERVICE: I caused true and correct copies of the above
20 document(s) to be sent electronically to the above-named parties via Express
21 Network's electronic filing and service portal in compliance with California Rules of
22 Court and local rules regarding electronic filing.

23 BY FACSIMILE: I sent via facsimile a copy of said document(s) to the above
24 addressee(s) at the stated fax number(s) in accordance with the written confirmation of
25 counsel in this action.

26 [State] I certify and declare under penalty of perjury under the laws of the State of
27 California that the above is true and correct.

28 [Federal] I declare that I am employed in the offices of a member of the State
Bar of this Court at whose direction the service was made. I declare under penalty
of perjury under the laws of the United States of America that the above is true and
correct.

Executed on November 14, 2019, at Oakland, California.


Konni S. Stalica

Goldfarb &
Lipman LLP
1300 Clay Street
Eleventh Floor
Oakland
California
94612
510 836-6336
510 836-1035 FAX

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PROOF OF SERVICE

Superior Court of California, County of *San Mateo*
Case No.: *18CIV02105*

I, Roseanne Rico, declare that:

I am employed in the County of San Francisco, State of California. I am over the age of 18, and am not a party to this action. My business address is 235 Montgomery Street, Suite 400, San Francisco, California 94104.

On January 10, 2020 I served:

NOTICE OF APPEAL OF ORDER

in said cause addressed as follows:

Dolores Dalton
Barbara Kautz
Goldfarb & Lipman
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Oakland, CA 94612
Email: ddalton@goldfarblipman.com
Email: bkautz@goldfarblipman.com

David Finkelstein
V. Winnie Tungpagasit
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/XX/ (BY E-SERVICE) I served the above documents through One Legal in accordance with the Court's Local Rule requiring all documents be served upon interested parties via One Legal.

/XX/ (BY MAIL) By placing a true copy thereof enclosed in a sealed envelope. I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at San Francisco, California, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 10, 2020 at San Francisco, California.



ROSEANNE RICO

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: San Francisco Bay Area Renters Federation v. City of San Mateo
Case No.: A159320

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; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On January 13, 2020, I served the attached **NOTICE OF INTERVENTION (UNDER CODE OF CIVIL PROCEDURE SECTION 902.1)** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

SEE ATTACHED SERVICE LIST

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 January 13, 2020, at Los Angeles, California.

Beth L. Gratz

Declarant



Signature

SAN FRANCISCO BAY AREA RENTERS FEDERATION V. CITY OF SAN MATEO
Case No. A159320

SERVICE LIST

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