DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: 24STCP03551 **Hearing Date:** February 18, 2025 **Dept:** 85

People of the State of California v.

City of Norwalk et al.,

24STCP03551

Tentative decision on demurrer: mostly overruled

Respondents/Defendants City of Norwalk ("City"), its City Council, and Jesus M. Gomez ("Gomez") demur to the Petition for Writ of Mandate and Complaint for Declaratory/Injunctive Relief filed by Petitioners People of the State of California ("State") and Department of Housing and Community Development ("HCD") (collectively, "State").

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

A. Statement of the Case

Petitioners filed the Petition on November 4, 2024. The Petition alleges in pertinent part as follows.

Petitioner State sues through its representative Attorney General Rob Bonta. Pet., ¶7. Petitioner HCD is the public agency responsible for developing housing policy and building codes, and for enforcing state housing laws, including the Housing Element Law, the Housing Accountability Act, state ADU laws, and the Housing Crisis Act. Pet., ¶6.

Respondent City is a general law City located in Los Angeles County. Pet., ¶19. As such, it is a municipal corporation formed and existing under the laws of California, of which it is a political subdivision. Pet., ¶9.

Respondent City Council is the elected governing body of the City. It is the legislative body charged under Government ("Govt.") Code section 65300 with responsibility for adopting a general plan, including a housing element, for the physical development of the City. Pet., ¶10.

Respondent Gomez is the City Manager, sued here in his official capacity. Pet., ¶ 11. The City Manager, appointed by the City Council, is responsible for overseeing the day-to-day operations of the City and advising the City Council on policy-related decisions. Ibid.

On November 23, 2023, HCD certified Norwalk's 6th Cycle (2021-2029) Housing Element. Pet., ¶22. According to its certified Housing Element, the City must permit 5024 housing units to be built before 2029 to

satisfy its Regional Housing Needs Allocation ("RHNA"). Ibid.

As of January 1, 2024, the City had issued permits only for 175 housing units since the start of the Sixth Cycle in January 2021, only 3.5% of its RHNA allocation. Pet., ¶ 24.

At its August 6, 2024 meeting, the City Council unanimously, and without any deliberation, adopted Urgency Ordinance 24-1752U ("Ordinance") which imposed a moratorium on the approval of Shelter and Supportive Housing, as well as car washes, laundromats, payday lenders, and liquor stores (the "Moratorium"). Pet., ¶26.

The City's explanation for the Moratorium stated that the identified uses, which include Shelter and Supportive Housing, "by virtue of [their] operational characteristics[,] may have a negative impact on the community", and the Moratorium allows staff the time to study the uses to research "reasonable standards" that can "better manage the uses" consistent with the City's strategic plan. Pet., ¶27.

The Ordinance found "there is an unprecedented demand for the establishment and operation of [supportive housing] for persons experiencing homelessness due to the housing crisis and shortage throughout the state," but that Shelter and Supportive Housing has "a detrimental impact upon the City, which [is] not being addressed by the City's current ordinances and zoning regulations." Pet., ¶28. It found that the City requires "a reasonable period of time to study existing [land uses prohibited by the urgency ordinance] and development standards to determine the potential adverse impacts on the environment, traffic, aesthetics, and visual quality of properties within the city." Ibid. It further found that Shelter and Supportive Housing poses an immediate threat to public health, safety, and welfare and that the ordinance "is necessary as an urgency measure to address said threats to public health, safety, and welfare." Ibid.

No facts or evidence supported the City's conclusion that the existence of Shelter and Supportive Housing poses an immediate threat to public health, safety, and welfare. Pet., ¶29.

On September 16, 2024, HCD issued a Notice of Violation to the City which identified various legal violations, including violations of the City's own housing element. Pet., ¶30.

On September 17, 2024, at a regularly scheduled meeting, the City Council considered extending the Moratorium through adopting Urgency Ordinance No. 24-1753U ("Extension Ordinance"). Pet., ¶31. The Extension Ordinance made no material changes to the Ordinance's findings. Pet., ¶33.

At the September 17, 2024 meeting, City Staff represented that they had reviewed: (1) City business license records to quantify the number of each type of identified use operating within the City; (2) surrounding cities' land use tables for the prohibited uses; (3) surrounding cities' development and operational standards for the prohibited uses; (4) various publications and articles on the prohibited uses; and (5) public safety calls for service and maintenance of properties involving the prohibited uses. Pet., ¶32. Staff presented no facts or evidence to support the conclusion that the existence of Shelter and Supportive Housing poses an immediate threat to public health, safety, and welfare. Pet., ¶33.

Without deliberation, the City Council adopted the Extension Ordinance unanimously. Ibid. The Ordinance extended the Moratorium for ten months and 15 days. Ibid.

On October 1, 2024, the City Council considered repealing the Moratorium on Shelter and Supportive Housing in a closed session. Pet., ¶ 34. The City Attorney orally reported that the City Council would not repeal the Moratorium but would instead seek to engage HCD and County officials and temporarily stay its enforcement until it could meet with HCD to reach a resolution. Ibid. The City Attorney stated that the City Council's "first priority" was to "to protect and preserve" the safety of the City's residents and neighborhoods and to also "take action that attempts to preserve local control of issues relating to land use in the City." Ibid.

No facts or evidence was cited to support the City's conclusion that the existence of Shelter and Supportive Housing poses an immediate threat to public health, safety, and welfare. Ibid. The Council did not repeal the Moratorium. See Pet., ¶36.

On October 2, 2024, HCD sent a letter to the City formally revoking its finding of housing element compliance. Pet., ¶36. To date, the City has not repealed the Moratorium. Pet., ¶38.

B. Demurrers

Demurrers are permitted in administrative mandate proceedings. CCP §§1108, 1109. A demurrer tests the legal sufficiency of the pleading alone and will be sustained where the pleading is defective on its face.

Where pleadings are defective, a party may raise the defect by way of a demurrer or motion to strike or by motion for judgment on the pleadings. CCP §430.30(a); Coyne v. Krempels, (1950) The party against whom a complaint or cross-complaint has been filed may object by demurrer or answer to the pleading. CCP §430.10. A demurrer is timely filed within the 30-day period after service of the complaint. CCP §430.40; Skrbina v. Fleming Companies, (1996) 45 Cal.App.4th 1353, 1364.

A demurrer may be asserted on any one or more of the following grounds: (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading; (b) The person who filed the pleading does not have legal capacity to sue; (c) There is another action pending between the same parties on the same cause of action; (d) There is a defect or misjoinder of parties; (e) The pleading does not state facts sufficient to constitute a cause of action; (f) The pleading is uncertain ("uncertain" includes ambiguous and unintelligible); (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct; (h) No certificate was filed as required by CCP section 411.35 or (i) by CCP section 411.36. CCP §430.10. Accordingly, a demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. CCP §430.30(a); Blank v. Kirwan, (1985) 39 Cal.3d 311, 318. The face of the pleading includes attachments and incorporations by reference (Frantz v. Blackwell, (1987) 189 Cal.App.3d 91, 94); it does not include inadmissible hearsay. Day v. Sharp, (1975) 50 Cal.App.3d 904, 914.

The sole issue on demurrer for failure to state a cause of action is whether the facts pleaded, if true, would entitle the plaintiff to relief. Garcetti v. Superior Court, (1996) 49 Cal.App.4th 1533, 1547; Limandri v. Judkins, (1997) 52 Cal.App.4th 326, 339. The question of plaintiff's ability to prove the allegations of the complaint or the possible difficulty in making such proof does not concern the reviewing court. Quelimane Co. v. Stewart Title Guaranty Co., (1998) 19 Cal.4th 26, 47. The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. Marshall v. Gibson, Dunn & Crutcher, (1995) 37 Cal.App.4th 1397, 1403. Nevertheless, this rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. Vance v. Villa Park Mobilehome Estates, (1995) 36 Cal.App.4th 698, 709.

For all demurrers filed after January 1, 2016, the demurring party must meet and confer in person or by telephone with the party who filed the pleading for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. CCP §430.41(a). As part of the meet and confer process, the demurring party must identify all of the specific causes of action that it believes are subject to demurrer and provide legal support for the claimed deficiencies. CCP §430.41(a)(1). The party who filed the pleading must in turn provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. Id. The demurring party is responsible for filing and serving a declaration that the meet and confer requirement has been met. CCP §430.41(a)(3).

If a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed. CCP §472a(c). In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. CCP §430.41(e)(1).

C. Governing Law

1. Housing Element

Pursuant to the Housing Element Law, Govt. Code §65580 *et seq*., each city and county in California must "adopt a comprehensive, long-term general plan" for its future physical development. Govt. Code §6 5300. This general plan is the basic land use charter with which all planning and development decisions must be consistent, and has been described as "a constitution for all future development within the city." Committee for Responsible Planning v. City of Indian Wells, (1989) 209 Cal.App.3d 1005, 1013 (citation omitted). The housing element is one of the general plan elements prescribed by law (Govt. Code §65302(c)), and holds a status of "preeminent importance" in the general plan. Id., at 1013. Local governments have a responsibility to facilitate new housing construction that "make[s] adequate provision for the housing needs of all economic segments of the community," including lower-income households. Govt. Code §65580(d).

HCD, the state agency with primary responsibility for housing policy, after consultation with each council of governments, allocates to each region in California the number of new housing units that must be constructed over the upcoming planning period in order to accommodate population growth. Govt. Code §65584(b). In Southern California, SCAG then allocates a RHNA requiring every city to accommodate its "fair share" of housing needs for each of the following income levels: very-low- and low-income (collectively, "lower income"), moderate-income, and above-moderate income. See Govt. Code §65584.

The housing element shall identify "adequate sites" to accommodate each jurisdiction's share of the RHNA at each income level. See Govt. Code §§ 65583(c)(1), 65583.2(a). Site must be "suitable for residential development," and must be made available for housing development during the planning period. Id.

HCD is charged with evaluating local housing elements for substantial compliance with the Housing Element Law, and reviews hundreds of housing elements each year. Govt. Code §65585. If HCD disapproves a housing element, the local jurisdiction must change it or adopt the housing element with a resolution of findings explaining why the element complies with the Housing Element Law. Govt. Code §65585(f). Once a jurisdiction adopts a general plan including a housing element and obtains approval from HCD, the jurisdiction is prohibited from adopting a specific plan that is inconsistent with the general plan, including its housing element. Govt. Code §§ 65454, 65860.

2. Mandamus

The legislative act of a legislative body is generally not subject to mandate. Scott v. Common Council, ("Scott") (1996) 44 Cal.App.4th 684, 693 (citation omitted). "Generally, a court is without power to interfere with purely legislative action, and when the Legislature has committed to a municipal body the power to legislate on a given subject, the court has no power to command or prohibit the exercise of the legislative function." Hicks v. Bd. of Supervisors (1977) 69 Cal.App.3d 228, 235 (citing Nickerson v. San Bernardino (1918) 179 Cal. 518, 522, and Monarch Cablevision, Inc. v. City Council, (1966) 239 Cal.App.2d 206, 211). "The reason the court may not command specific legislative action is that such interference would violate the basic constitutional concept of separation of powers." Id.

A city council's legislative power is not unlimited. See Scott, supra, 44 Cal.App.4th at 693. Mandate may issue when a local legislative body acts without power or refuses to obey the plain mandate of law. Walker v. County of Los Angeles, (1961) 55 Cal.2d 626, 639. "A municipal ordinance must be consistent with the general powers and purposes of the corporation; must harmonize with the general laws of the state, the municipal charter, and the principles of the common law." Ferran v. City of Palo Alto, (1942) 50 Cal.App.2d 374, 378.

"Any action to challenge a general plan or any element thereof on the grounds that such plan or element does not substantially comply with the requirements of Article 5 (commencing with Section 65300) shall be brought pursuant to Section 1085 of the Code of Civil Procedure." Govt. Code §6 5751; Garat v. City of Riverside, (1991) 2 Cal.App.4th 259, 292, *overruled on other grounds*, Morehart v. County of Santa Barbara, (1994) 7 Cal.4th 725, 739.

C. Analysis

The City demurs to the Petition in its entirety on the grounds that it contains a defect or misjoinder of the parties and fails to state facts sufficient to constitute a cause of action.

1. Meet-and-Confer

On November 27, 2024, Respondents' counsel, Christy M. Garcia, Esq., and the City Attorney had a telephone call with Petitioner's counsel, John Natalizio, Esq., on the bases for Respondents' demurrer. Garcia Decl., ¶ 3. No agreement was reached on any of the issues raised in Respondents' demurrer. Ibid. Respondents have satisfied the meet-and confer requirement.

2. Summary of the Petition's Causes of Action

Petitioners summarize the Petition's claims as follows.

The first cause of action alleges that the enactment of the urgency ordinances violated the urgency ordinance statute. The enactment of the urgency ordinances, which remain in effect, were made without the requisite supported findings.

The second cause of action alleges a violation of the Housing Crisis Act. The violation of the Housing Crisis Act stems not only from the adoption of the Moratorium imposing an unlawful restriction on housing development, but also from the City's failure to follow required procedure by submitting the urgency ordinances for HCD to review prior to their enactment.

The third cause of action alleges the City's adoption of the urgency ordinances resulted in various violations of the Housing Element Law. The enactment of the Moratorium violates the identified provisions and programs in the City's certified housing element, which resulted in HCD's revocation of its finding of housing element compliance.

The fourth cause of action alleges that the enactment of the Moratorium resulted in a violation of the Anti-Discrimination in Land Use Law. The City's actions to restrict access to housing based upon a protected class and/or specified housing development resulted in unlawful discrimination.

The fifth cause of action challenges the City's action by alleging the City failed to comply with its ministerial obligation to affirmatively further fair housing. The City's actions to adopt the urgency ordinances violated this ministerial duty.

The sixth cause of action alleges that the City's enactment of the Moratorium violated various state-laws which involve "by right" housing. By enacting the Moratorium, the City has attempted to by-pass state laws which authorize emergency shelters and supportive housing as a by-right use. The Moratorium is therefore preempted as it relates to emergency shelters and supportive housing.

The seventh cause of action seeks declaratory relief regarding these violations of state law. Declaratory relief is a proper remedy to address whether a public agency is ignoring or violating applicable laws. *See e.g.*, Californians for Native Salmon Assn. v. Department of Forestry, (1990) 221 Cal.App.3d 1419, 1428-29. Opp. at 11-12.

3. Mootness

The California Supreme Court has held that "a writ of mandate is discretionary and it will be granted only where necessary to protect a substantial right and only when it is shown that some substantial damage will be suffered by the petitioner if said writ is denied." Ault v. Council of the City of San Rafael, ("Ault") (1941) 17 Cal.2d 415, 417 (mandamus denied where petitioner failed to show he would be injured by waiting 12 days between the special election he sought and the city's general election). A petition for writ of mandate must be denied when the proceeding to which it is directed has become moot. City of Los Angeles v. Offner, (1941) 18 Cal.2d 859 (denying writ to compel posting and publishing notices inviting bids for public work, where time for receiving bids had expired).

"Although a case may originally present an existing controversy, if before decision it has, through the acts of the parties or other cause, occurring after commencement of the action, lost that essential character, it becomes a moot case or question which will not be considered by the court." Wilson v. Los Angeles County Civil Service Com., (1952) 112 Cal.App.2d 450, 453; Colony Cove Props., LLC v. City of Carson, (2010) 187 Cal.App.4th 1487, 1509. "The pivotal question in determining if a case is moot is [] whether the court can grant the plaintiff any effectual relief." Giles v. Horn, (2002) 100 Cal.App.4th 206, 227 (claim that county failed to make required findings to approve contracts rendered moot by contract extensions which were the operative agreements); Eye Dog Foundation v. State Bd. of Guide Dogs for the Blind, ("Eye Dog Foundation") (1967) 67 Cal. 2d 536, 541.

The Petition alleges that "a stay, temporary restraining order, preliminary injunction, and permanent injunction is also necessary to prohibit the City from implementing or enforcing the Moratorium and/or similar local directives causing irreparable harm to proposed Shelter and Supportive Housing projects and the residents it endeavors to house and serve." Pet., ¶92.

The City argues that Petitioners cannot maintain this action because the controversy is moot. The Petition concedes that the Moratorium is not currently being enforced:

> "On October 1, 2024, the City Council considered repealing the Moratorium on Shelter and Supporting Housing in a closed session." Pet., ¶34.
> "The City Attorney orally reported that the City Council would not repeal the Moratorium, but would instead seek to engage with HCD and county official, and would temporarily stay its enforcement until such time it could meet with HCD in an attempt to reach a resolution…" Pet., ¶35 (emphasis added).

Although the City Council has not repealed the Moratorium, it temporarily stayed its enforcement in an attempt to reach a resolution with HCD. The stay has been in place since October 1, 2024. The City notes that the Petition is devoid of any allegation related to the City lifting the stay on enforcement. Why? Because the stay has not been lifted. The Petition fails to identify how Petitioners are injured or substantially damaged by the stayed Moratorium that is not being enforced by the City. Dem. at 8, 11.

The case is not moot. Petitioners challenge the Extension Ordinance, and the Moratorium remains in effect. Petitioners seek remedies of (1) a writ of mandate ordering the City to set aside and find invalid the Extension

Ordinance and Moratorium and (2) declaratory judgments for the City's violation of numerous state laws. A temporary stay of the Moratorium does not resolve these issues because it is only temporary while the City attempts to resolve the dispute with HCD. The Petition does not allege that the stay will continue if the City cannot resolve the dispute. A court should not dismiss a case as moot if a substantial issue remains. Terry v. Civil Serv. Comm'n, (1952) 108 Cal. App. 2d 861. A case is not moot where there remain material questions for the court's determination that impact a party's future and contingent legal rights. Eye Dog Foundation, *supra*, 67 Cal.3d at 541. In other words, a case is moot only where the disposition of the case is "a matter of indifference to the parties" -- where disposition of the case will neither benefit the plaintiff nor harm the defendant. Turner v. Markham, (1909) 156 Cal. 68, 69.

Moreover, voluntary cessation of conduct does not necessarily render a claim moot because there is a that the defendant could stop the challenged practice just long enough for the case to be dismissed and then resume it. *See* Center for Local Government Accountability v. City of San Diego, (2016) 247 Cal.App.4th 1146, 1157. The standard for determining whether a case has been mooted by the defendant's voluntary conduct is if that the allegedly wrongful behavior could reasonably be expected to recur. Id.; Environmental Defense Project of Sierra County v. County of Sierra (2008) 158 Cal.App.4th 877, 887. Petitioners are correct (Opp. at 14) that the City's allegedly wrongful action can be reasonably expected to reoccur. The City's demurrer explicitly acknowledges the temporary nature of the stay. When and if the City cannot reach a resolution with HCD, the stay may be expected to be lifted.[1]

Finally, there is a discretionary exception to mootness where the case presents an issue of broad public interest that is likely to reoccur. Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga, (2000) 82 Cal.App.4th 479-80. When an action involves a matter of continuing public interest that is likely to recur, a court may exercise an inherent discretion to resolve that issue, even if an event occurring during the pendency of the action normally would render the matter moot. Bldg. a Better Redondo, Inc. v. City of Redondo Beach (2012) 203 Cal. App. 4th 852, 867; Ghost Golf, Inc. v. Newsom, 102 Cal. App. 5th 88, 100; Roger v County of Riverside (2020) 44 Cal.App.5th 510, 529–31. Petitioners are correct that there is a significant public interest in ensuring that the City does not enact an ordinance that violates state law. Opp. at 15.

The case is not mooted by the City's temporary stay.

4. Ripeness

"California courts will decide only justiciable controversies." Wilson & Wilson v City Council of Redwood City, (2011)0 191 Cal.App. 4th 1559, 1573. The doctrine of justiciability, which includes "ripeness" and "actual controversy" requirements, prevents courts from issuing advisory opinions. Pacific Legal Foundation v. California Coastal Commission, ("Pacific Legal Foundation") (1982) 33 Cal.3d 158, 170. This doctrine applies regardless of the form of the action (mandamus, declaratory relief, or injunctive relief). Id. at 169-72.

For a controversy to be ripe, it "must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Pacific Legal Foundation, *supra,* 33 Cal.3d at 170. There is a two-part test for ripeness: (1) is the dispute sufficiently concrete? and (2) what is the hardship to the parties of withholding judicial review? Id. at 171. A "hardship" means an "imminent and significant hardship in further delay." Farm Sanctuary, Inc. v. Dept. of Food & Agriculture, (1998) 63 Cal.App.4th 495, 502.

"Under the first prong, the courts will decline to adjudicate a dispute if 'the abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues', if the court is asked to speculate on the resolution of hypothetical situations, or if the case presents a 'contrived inquiry'. Under the second prong, the courts will not intervene merely to settle a difference of opinion; there must be an imminent and significant hardship

inherent in further delay." Farm Sanctuary, Inc. v. Department of Food Agriculture (1998) 63 Cal.App.4th 495, 502 (citations omitted).

The City argues that the Petition is premised on unripe allegations concerning the Moratorium. Although the Moratorium was adopted by the City Council, it has not been enforced since October 1, 2024. This court would be tasked with speculating how and whether the Moratorium would be applied by the City and how it would affect Petitioners. The Petition also fails to allege facts showing an imminent and significant hardship inherent in further delay. The Petition concedes that the City stayed enforcement of the Moratorium in an attempt to reach a resolution with HCD, so where's the fire? The fact is that Petitioners do not want to entertain discussions with the City and have no interest in addressing its concerns. Petitioners charged into court and insisted on invalidation of the Moratorium without alleging any facts of imminent and significant hardship. Under the first prong, the dispute is not "sufficiently concrete" because the Moratorium is stayed and is not being enforced by the City. The second prong also is not satisfied because none of the parties will endure any type of hardship should the court sustain the City's demurrer. In essence, Petitioners have requested an advisory opinion and a justiciable controversy does not exist. Dem. at 13.

The City's argument rebuts itself. The City contends that Petitioners have no interest in hearing its concerns and do not want to entertain discussion of a resolution to the Moratorium. This is the very definition of a controversy that is ripe. As Petitioners argue (Opp. at 17), a decision by the court would not be advisory nor speculative because Petitioners are asking the court to order the City to comply with its legal obligations. *See* California Alliance for Utility etc. Education v. City of San Diego, (1997) 56 Cal.App.4th 1024, 1029-30 (actual controversy existed where the parties disagreed whether the city council's actions violated the city charter and state law). The dispute is sufficiently concrete and the failure to comply with state law harms the public interests that Petitioners are obligated to protect.[2]

The City relies (Dem. at 12-13) on Stonehouse Homes LLC v. City of Sierra Madre, ("Stonehouse") (2008) 167 Cal.App.4th 531, where the City of Sierra Madre adopted an urgency ordinance which created a moratorium on development for certain properties located within a hillside management zone. Id. at 534. During this time, the developer submitted applications for single family residences located within the moratorium area. Id. at 535. At a hearing, the council adopted a resolution which directed the planning commission, in conjunction with the ad hoc committee and staff, to prepare an ordinance amending the zoning code regarding various requirements in the hillside management zone. Id. at 535-36. The developer sought declaratory relief challenging the resolution, arguing that it violated constitutional and statutory rights of substantive and procedural due process and equal protection and therefore was invalid. Ibid.

The Stonehouse court opined: "Under the allegations of the complaint, final recommendations have yet to be made by the planning commission or the HMZ advisory committee. At this stage, the court must speculate as to what legislation, if any, the City might adopt and whether and how that legislation might be applied to Stonehouse's property." Id. at 541. The complaint also failed under the second prong of the ripeness test because it failed to allege facts showing "an imminent and significant hardship inherent in further delay." Id. at 542 (citations omitted). Dem. .at 12-13.

Petitioners correctly distinguish Stonehouse. Opp. at 18. The Stonehouse court found that the case was not ripe because the resolution only gave notice of potential legislation that might be adopted in the future and that it implicated no rights onto the developer. Id. at 541. Unlike Stonehouse, the controversy in this case does not involve a resolution nor is there any future ordinance anticipated by the Petition.[3]

5. Misjoinder

A city council generally is not a legal entity separate or independent from the city it governs. *See* Rutgard v. City of Los Angeles, (2020) 52 Cal. App. 5th 815, n. 2. However, a writ of mandate may be issued against officers, including elected officials, who are responsible for effectuating the steps through which the

performance of the act sought is affected. See Sacramento County Alliance of Law Enforcement v. County of Sacramento (2007) 151 Cal.App.4th 1012, 1020.

The City argues that the Petition is subject to demurrer because there is a defect or misjoinder of parties pursuant to CCP section 430.10(d). Specifically, the City Council is not a public entity separate and apart from the City, and therefore lacks capacity to be sued. Dem. at 14.

Petitioners respond that, as pled, the City Council is uniquely responsible for ensuring that the City adopts a proper general plan, including a housing element. Govt. Code §65300. The City Council is responsible for adopting ordinances, including urgency ordinances, and therefore is necessary for this case so the court may issue a writ to set aside the Extension Ordinance and Moratorium. The City Council must be a named party since it is the body responsible for the required actions. Opp. at 19-20.

Petitioners are incorrect. While there are circumstances in which a City Council acts as an administrative agency and may be named as a mandamus respondent, the Petition's allegations concern the City Council's actions as a legislative body. In that circumstance, it is not a legal entity separate from the City. The demurrer is sustained as to the City Council.

D. Conclusion

The demurrer is sustained without leave to amend as to the City Council and overruled on the remaining grounds. The City has 30 days to answer only.

---

[1] In reply, the City notes (Reply at 2-3) that a claim may be considered moot if the defendant can demonstrate that there is no reasonable expectation that the wrong will be repeated. *See* Pittenger v. Home Sav. And Loan Ass'n of Los Angeles, (1958) 166 Cal. App. 2d 32, 36 (citations omitted). The City relies on Lee v. Davis, (1983) 141 Cal. App. 3d 989, where the court held that an action challenging the constitutionality of an ordinance against nude entertainment where food or beverages were being served was moot where a city did not repeal or modify its moratorium but stated that it knew the ordinance was unconstitutional and it did not intend to enforce it. Id. at 993. The respondents agreed that the city had declared an 'informal moratorium' on the enforcement of the local ordinances but pointed out that there had been no formal legislative proceedings to amend the code sections, and that the enforcement or nonenforcement of those sections was entirely dependent on the discretion of the city. Id. at 993. The court analyzed California case authority that held "where an injunction is sought solely to prevent recurrence of proscribed conduct which in good faith has been discontinued, there is no equitable reason for an injunction. Injunctive relief is ordered only where there is evidence that the acts will probably recur." Id. (citations omitted). The court held that the case was moot because the city had in good faith discontinued prosecuting a clearly unconstitutional ordinance, and there was no indication that enforcement will probably reoccur. Id. at 993-94.

The city's clear declaration in Lee that it would not enforce an ordinance that it recognized was unconstitutional is easily distinguished from the City's temporary stay while it tries to resolve with HCD.

[2] Petitioners note that the Attorney General, acting on behalf of the people of California, and HCD are explicitly authorized to enforce the state laws identified in the Petition and are beneficially interested parties. The State is tasked with ensuring that cities and city councils correctly adhere to these state laws. HCD is authorized by statute to enforce numerous housing laws, including the Housing Accountability Act, Housing Crisis Act, Anti-Discrimination Land Use Law, Affirmatively Furthering Fair Housing law, and by-right housing laws. Govt. Code §65585(j). The Attorney General is authorized, in his own capacity and on behalf of the people, as well on behalf of HCD, to enforce the state housing laws in Govt. Code section 65585 as well as the urgency ordinance statute in Govt. Code section 65858. Cal. Const., Art. V, §13; Govt. Code §§ 12510

et seq; Govt. Code §65585(j). When cities fail to comply with these state laws, it injures the people of the State of California and the Attorney General and HCD are statutorily responsible for the law's enforcement. Opp. 16.

The City argues that there is no developer who is a party and seeking relief from the Moratorium, relying on People ex rel. Lynch v. Superior Court, ("Lynch") (1970) 1 Cal.3d 910, 911, in which the California Supreme Court held that the Attorney General could not seek mandamus that the prejudgment attachment statutes were void because the Attorney General was seeking an advisory opinion. Reply at 5. Relatedly, the City argues that Petitioners have no special interest over and above the interest in common with the public at large and therefore do not have standing. Reply at 6.

But Petitioners do have a special interest over and above the general public. Petitioners have a duty to enforce the statutes cited above. Unlike Lynch, there is nothing advisory about Petitioners' enforcement of statutes they are tasked to enforce.

[3] The court need not address Petitioners' additional argument that the stay is an unlawful amendment of the Extension Ordinance. Opp. at 9-10. *See* Reply at 4-5.
