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13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES**

15 CITY OF HUNTINGTON BEACH, a)
16 California Charter City,)

17 Petitioner/Plaintiff,)

18 v.)

19 THE STATE OF CALIFORNIA; GAVIN)
20 NEWSOM, Governor of California, in his)
21 Official Capacity; XAVIER BECERRA,)
22 Attorney General of California, in his Official)
23 Capacity, and, DOES 1 through 20,)

24 Respondents/Defendants.)

Lead Case No. 30-2019-01044945
[Consolidated Case No. 30-2019-01048692]

Assigned to The Honorable James C. Chalfant

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PROPOSED INTERVENERS'
MOTION TO INTERVENE**

Date: July 23, 2019

Time: 1:30 p.m.

Dept: 85

Action Filed: February 1, 2019

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1 **INTRODUCTION**

2 In the midst of a severe affordable housing crisis, may the Legislature enact legislation
3 to ensure that California’s 121 charter cities do their part to meet the state’s housing needs? The
4 City of Huntington Beach filed this suit against the State of California and state officials, asserting
5 that the Legislature cannot. The City claims that Senate Bill 166 and Senate Bill 1333¹ violate the
6 home rule doctrine, arguing that the application of Government Code § 65863 to charter cities is
7 unconstitutional because zoning is a municipal affair and cannot be a matter of statewide concern.
8 But zoning’s impact on ensuring that Californians can have a place to call home *is* a matter of
9 statewide concern – and of particular concern to Housing California and the California Coalition for
10 Rural Housing (CCRH), who seek to intervene in this lawsuit.

11 Housing California and CCRH have a direct interest in upholding SB 166 and 1333.
12 Housing California is a non-profit organization dedicated to preventing and ending homelessness
13 and increasing the supply of safe, stable, and permanently affordable homes throughout the state.
14 Through education, advocacy, and outreach, Housing California advances the housing needs of
15 very low- and low-income residents. CCRH is one of the oldest state low-income housing coalitions
16 in the country. CCRH advances its efforts to promote and preserve affordable housing in rural
17 California through advocacy, organizing, research, and technical assistance.

18 Because so many cities refuse to do their fair share to accommodate housing, one of the
19 greatest barriers to building affordable housing is the lack of adequate sites on which to do so. And
20 because there are 121 charter cities in California (approximately 45 in rural areas), containing
21 almost half of the state’s population, neither Housing California nor CCRH would be able to fulfill
22 their missions if the City were to prevail in this lawsuit. A judgment in favor of the City would also
23 undo the significant work both organizations have done to advocate for laws promoting the
24 development of affordable housing statewide.

25
26
27
28 ¹ Sen. Bill 166 (Stats. 2017, Ch. 367); Sen. Bill 1333 (Stats. 2018, Ch. 856).

1 **FACTUAL BACKGROUND**

2 **I. California is in the midst of a housing crisis.**

3 Almost forty years ago, the Legislature declared that “[t]he availability of housing is of
4 vital statewide importance” and enacted planning and zoning laws designed to “assure that counties
5 and cities recognize their responsibilities in contributing to the attainment of the state housing
6 goal.” Gov’t Code §65581, added by Stats.1980, c. 1143, p. 3697, § 3. Those laws require that all
7 localities plan to accommodate their fair share of housing. But as the California Supreme Court
8 recognized in 2015, “the significant problems arising from a scarcity of affordable housing have not
9 been solved over the past three decades. Rather, these problems have become more severe and have
10 reached what might be described as epic proportions in many of the state's localities.” *California*
11 *Bldg. Indus. Assn. v. City of San Jose*, 61 Cal. 4th 435, 441 (2015). To address that epic crisis, the
12 Legislature has enacted laws to close loopholes that allowed cities to shirk their responsibility to
13 accommodate the housing needs of the people in their communities.

14 **A. The Legislature enacts SB 166 and SB 1333 in response to the**
15 **affordable housing crisis.**

16 To ensure every community does its fair share to house the state’s residents, the
17 Legislature long ago enacted a requirement that every locality in the state must identify, in the
18 Housing Element to its General Plan [Gov’t Code §§65680 *et seq.*], adequate sites on which low-
19 and moderate-income housing can be built. To accomplish this, every region of the state undergoes
20 a periodic process to establish a regional housing needs allocation (RHNA). The RHNA is a
21 projection of the existing and future housing needs of a jurisdiction, by income level. Gov’t Code
22 §65584. Because rental housing for low- and moderate-income households is usually economically
23 feasible only at higher densities, localities must maintain enough sites that allow for higher density
24 development.

25 Prior to the passage of SB 166 “the law did not adequately address . . . ways in which
26 development approvals [could] leave a city without sufficient land to accommodate its housing
27 need.” Request for Judicial Notice, Ex. 1, Sen. Floor Analysis, SB 166, at 5. For example, when a
28 city would approve “high-end market-rate housing” or commercial uses on “a site identified to

1 accommodate a portion of a local government’s need for lower-income households”, “a city or
2 county’s supply of land for housing . . . [could quickly] disappear even though the locality has seen
3 little or no development of housing for low- and moderate-income households.” *Id.* at 5-6.

4 So in 2017, the Legislature passed Senate Bill 166, which is codified at Government
5 Code § 65863. SB 166 requires California cities to make enough sites available to accommodate
6 their respective share of the RHNA *at all times* throughout the planning period. *Id.* at 3-5. This “no
7 net loss” approach ensures that any time a city takes action that would lower the amount of sites
8 available to accommodate low- or moderate-income housing, it has to identify and make available
9 alternative sites that could be used for the production of affordable housing. *Id.* This bill, along with
10 several others, was signed by former Governor Edmund G. Brown as part of California’s landmark
11 2017 Housing Package.

12 While the Legislature was working to address the housing crisis, the City was embroiled
13 in litigation for its failure to accommodate enough sites for affordable housing. *The Kennedy*
14 *Comm. v. City of Huntington Beach*, 16 Cal. App. 5th 841 (2017). The Kennedy Commission, a
15 community-based nonprofit organization, filed suit to invalidate the City’s development plan after
16 the City amended a specific plan to reduce the amount of affordable housing that could be built on a
17 parcel meant to accommodate multi-family high-density housing. *Id.* at 845-847. The Kennedy
18 Commission succeeded at the trial court level, but the Court of Appeal reversed, holding that the
19 City’s specific plan did not have to be consistent with the City’s General Plan because charter cities
20 were exempt from certain portions of the Planning and Zoning law. *Id.* at 854-857.

21 In response to *Kennedy Commission*, the Legislature enacted Senate Bill 1333, which
22 made provisions of the Planning and Zoning Law including the No Net Loss Zoning law, Gov’t
23 Code § 65863, applicable to charter cities. Request for Judicial Notice, Ex. 2, Senate Floor
24 Analyses, SB 1333, August 30, 2018 at 3-4. By clarifying that the Planning and Zoning Law applies
25 to charter cities, the law ensures that their zoning ordinances, specific plans, and development
26 agreements are consistent with the plans for affordable housing contained in their housing elements.

1 **B. The City files this lawsuit challenging SB 166 and SB 1333.**

2 On February 1, 2019, the City filed this action for a writ of mandate prohibiting the State
3 from enforcing Government Code § 65863, as amended by SB 166 and 1333, and for declaratory
4 relief seeking a judicial determination that Government Code § 65863, as amended by SB 166 and
5 1333, is unconstitutional pursuant to Article XI, § 5 of the California Constitution. Petition ¶ 14.
6 The State answered the Petition on March 8, 2019, generally denying the allegations and asserting
7 the City’s failure to assert a cause of action and improper request for an advisory opinion. General
8 Denial at ¶¶ 1-2. The General Denial further asserts the State of California and Governor Gavin
9 Newsom are improper defendants in the matter. *Id.*

10 **C. The Proposed Interveners successfully advocate for policies to preserve
11 and build housing affordable to low-income individuals and families.**

12 Housing California and CCRH are statewide affordable housing advocacy organizations
13 that are active in the capitol. Since 1988, Housing California has been working to prevent and end
14 homelessness and promote the development and preservation of safe, stable, accessible and
15 permanently affordable homes for low-income households. Declaration of Lisa Hershey at ¶ 2. A
16 major component of Housing California’s work is educating and influencing state legislators about
17 housing policy, especially land use, budget and financing, and homelessness. *Id.* at ¶ 3. For
18 example, in 2018 Housing California co-sponsored AB 2162, which allows development, by-right,
19 of permanent supportive housing for the homeless in all multifamily and mixed-use zones. *Id.* at ¶
20 4. That same year, Housing California also co-sponsored AB 1505 (allowing cities to mandate
21 inclusion of affordable residential rental units in new development), and AB 1771 (creating a more
22 equitable, data driven distribution of the RHNA). *Id.* at ¶¶ 4-5. All of these bills were signed into
23 law. *Id.* at ¶¶ 4-5.

24 For its part, CCRH has, since its inception, played a role in nearly every state housing
25 policy and program issue affecting low-income and rural housing. Declaration of Robert Wiener at
26 ¶ 6. CCRH co-sponsors or supports legislation that will primarily affect rural communities and has
27 invested significant resources to promote legislation that furthers the development of affordable
28 housing in rural areas. *Id.* at ¶¶ 6-7.

1 For example, in 2017 CCRH co-sponsored SB 2, which created an ongoing source of funding for
2 affordable housing development, and supported AB 1505. *Id.* at ¶ 8. CCRH also advances its
3 mission through comprehensive research studies that have identified zoning and land use barriers to
4 affordable housing development in rural communities. *Id.* at ¶ 9-11.

5 ARGUMENT

6 Code of Civil Procedure § 387(c) provides, in pertinent part, “Upon timely application,
7 any person, who has interest in the matter in litigation, or in the success of either of the parties, or
8 an interest against both, may intervene in the action or proceeding.” The purpose of intervention is
9 to “promote fairness” by allowing “all parties” who may be affected by the outcome of litigation to
10 participate. *Lincoln Nat’l. Life Ins. Co. v. Bd. Of Equal’n*, 30 Cal. App. 4th 1411, 1423 (1994)
11 (intervention proper where party has an interest and intervention neither expands scope of litigation
12 nor infringes upon original parties’ right to litigate case). For that reason, while permitting
13 intervention under § 387(c) is a matter of the court’s discretion, courts must liberally construe the
14 statute in favor of intervention. *Simpson Redwood Co. v. State of California*, 196 Cal. App. 3d
15 1192, 1200 (1987) (reversing trial court order refusing intervention).

16 A third party may intervene in an action if: (1) the party has a direct and immediate
17 interest in the action; (2) the intervention will not enlarge the issues in the litigation; and (3) the
18 reasons for intervention outweigh any opposition by the parties presently in the action. *U.S.*
19 *Ecology, Inc. v. State of California*, 92 Cal. App. 4th 113, 139 (2001). Housing California and
20 CCRH satisfy each of these requirements.

21 I. Proposed Intervenors have a direct and immediate interest in this action.

22 The proposed intervenors’ “interest must be of such a direct and immediate nature that
23 the moving party will either gain or lose by the direct legal operation and effect of the judgment.”
24 *Sienna Court Homeowners Ass’n v. Green Valley Corp.*, 164 Cal. App. 4th 1416, 1428 (2008). To
25 show a “direct and immediate interest” in this litigation, intervenors need not have any pecuniary
26 interest in the dispute, or a specific legal or equitable interest in the subject matter of the litigation.
27 *Rominger v. County of Trinity*, 147 Cal. App. 3d 655, 661 (1983). Nor is it “necessary that his
28 interest in the action be such that he will inevitably be affected by the judgment. It is enough that

1 there is a substantial probability that his interests will be so affected.” *Timberidge Enterprises v.*
2 *City of Santa Rosa*, 86 Cal. App. 3d 873, 881 (1978).

3 Applying these standards, courts have routinely granted the intended beneficiaries of
4 law or policy leave to intervene in an action challenging that law or policy, and appellate courts
5 have found abuse of discretion when trial courts refuse to allow intervention in such circumstances.
6 *See, e.g. Simac Design, Inc. v. Alciati*, 92 Cal. App. 3d 146, 157 (1979) (permitting intervention of
7 association of citizens who campaigned for local growth initiative, in action against municipality
8 challenging enforcement of that initiative); *Timberidge Enterprises*, 86 Cal. App. 3d at 881-82
9 (reversing trial court decision denying school district leave to intervene in action by developer
10 challenging city’s school impact fee); *Bustop v. Super. Ct.*, 69 Cal. App. 3d 66, 70-71 (1977)
11 (holding that parents opposed to school busing had sufficient interest “in a sound educational
12 system and in the operation of that system in accordance with the law” to permit intervention in an
13 action concerning school district’s desegregation plan).

14 *Rominger v. County of Trinity* is instructive. The Court of Appeal held that a trial court
15 abused its discretion when it denied an environmental organization leave to intervene in a case in
16 which the plaintiff challenged an ordinance restricting certain pesticide and herbicide use. 147 Cal.
17 App. 3d at 655. The appellate court reasoned, “[w]here a statute exists specifically to protect the
18 public from a hazard to its health and welfare that would allegedly occur without such statute,
19 members of the public have a substantial interest in the protection and benefit provided by such
20 statute. If a party brings an action to invalidate such statute, such action has an immediate and direct
21 effect on the public’s interest in protecting its health and welfare.” *Id.* at 662-63. Here, “the subject
22 of housing is of vital statewide importance to the health, safety, and welfare of residents” because
23 “[d]ecent housing is an essential motivating force in helping people achieve self-fulfillment in a
24 free and democratic society.” Health & Safety Code §50001(a). Further, a “healthy housing market
25 is necessary both to achieve a healthy state economy and to avoid an unacceptable level of
26 unemployment.” *Id.* at (b)(d).

27 Housing California and CCRH will be directly impacted by the outcome of this
28 litigation because both interveners are dedicated to promoting the development of affordable

1 housing. Government Code § 65583 eliminates one of the two most significant barriers to building
2 affordable housing in California: “inadequate sites to build affordable housing (*i.e.* areas zoned for
3 multifamily over single family.)” Request for Judicial Notice, Ex. 1 at 7. If the City succeeds in
4 invalidating § 65883 as it applies to charter cities, it would have a devastating direct and immediate
5 effect on Housing California and CCRH’s interest in protecting the public health and welfare
6 through the provision of adequate housing for low-income people.

7 The decision, if the City prevails, will also severely undercut the impact of key housing
8 legislation that Housing California and CCRH have co-sponsored and supported throughout the
9 years, and which is intended to advance the development of affordable housing. Hershey Decl. at ¶¶
10 7-8; Wiener Decl. at ¶ 15. For example, AB 1771 altered the way in which regional housing needs
11 are allocated in order to create a more equitable system, in which each jurisdiction is doing its fair
12 share to zone for housing. A decision in favor of Huntington Beach would throw that legislation
13 into question.

14 In a recent study published by CCRH, “Farmworker Housing Study Action Plan for
15 Salinas Valley and Parajo Valley,” CCRH researchers identified “land scarcity for developing
16 housing” as “one of the biggest hurdles” to housing developers and growers. Wiener Decl. at ¶ 11.
17 The report recommended developing tens of thousands of housing units within the next five years
18 to stabilize the agriculture workforce in the Salinas and Parajo Valleys, both of which contain
19 charter cities. *Id.* CCRH’s recommendations would be undermined if charter cities were not
20 required to accommodate their share of the regional housing needs.

21 Additionally, if charter cities are not required to maintain an inventory of sites to
22 accommodate higher-density housing affordable to lower income households, Housing California
23 and CCRH will have to expend significantly more resources to advance their mission by engaging
24 in or supporting advocacy in each of the state’s numerous charter cities to eliminate this serious
25 barrier. Hershey Decl. at ¶ 8; Wiener Decl. at ¶ 15.

1 **II. Proposed Interveners’ interests cannot be adequately represented by defendants.**

2 Housing California and CCRH have a direct interest in upholding SB 166 and 1333
3 because both organizations are dedicated to promoting the development of affordable housing for
4 California’s lowest income residents. While the State also has an interest in promoting housing
5 development, its interest lies principally in protecting the legality of its own actions and it must
6 represent the interests of the general public. Such governmental interest is not coincident with the
7 personal stake of Housing California and CCRH, and does not justify denying intervention. In
8 *Rominger v. County of Trinity*, 147 Cal. App. 3d at 665, the Court of Appeal held that even though
9 the county was concerned with protecting its residents when it defended a local ordinance limiting
10 pesticide use, the county did not represent individual community members, so intervention by an
11 environmental group was warranted. *See also Simpson Redwood v. State of California*, 196 Cal.
12 App. 3d at 1203-04 (reversing trial court’s refusal to allow intervention and reasoning that
13 “appellant’s own substantial interests probably cannot be adequately served by the State’s sole
14 participation”).

15 As a governmental entity, the State is subject to conflicting and shifting constituent
16 pressures, which renders representation of Housing California and CCRH’s particular interests
17 inadequate. Decisions interpreting Code of Civil Procedure section 387’s federal analog, Federal
18 Rule of Civil Procedure Rule 24(b), are instructive here. *Ziani Homeowners Assn. v. Brookfield*
19 *Ziani LLC*, 243 Cal.App.4th 274, 282 (2015)(“in adopting section 387, the Legislature intended it to
20 be interpreted consistently with federal cases interpreting rule 24”). In allowing private entities to
21 intervene and defend federal laws designed to protect the public interest, courts have acknowledged
22 that government entities cannot adequately represent the interests of an organization dedicated to
23 serving a particular segment of the public or addressing a particular issue. *Utah Ass’n of Counties v.*
24 *Clinton*, 255 F. 3d 1246, 1254-55 (10th Cir. 2001) (reversing denial of environmental group’s
25 motion to intervene and finding that group’s interest would not be adequately represented by
26 government); *Conservation Law Foundation of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44
27 (1st Cir. 1992)(granting intervention and noting that it is impossible for a government entity to
28 represent the general public interest and the narrower interest of a private group).

1 The State’s inability to adequately represent the interests of Proposed Interveners is
2 heightened here because this lawsuit pits the State against the City of Huntington Beach, a large
3 charter city whose residents are also residents of the State. In balancing the competing interests of
4 its various constituencies, the State may decline to appeal or seek Supreme Court review for an
5 adverse judgment. Further, Defendants may not raise important considerations that led to the
6 passage of SB 166 and 1333 or raise all of the arguments that Proposed Interveners may raise. In
7 this regard, the Proposed Interveners’ arguments will differ from those of Defendants precisely
8 because their interests are different. *Utah Ass’n of Counties v. Clinton*, 255 F.3d at 1256 (“In
9 litigating on behalf of the general public, the government is obligated to consider a broad spectrum
10 of views, many of which may conflict with the particular interest of the would-be intervenor.”)
11 Proposed Interveners have firsthand knowledge of the challenges impeding the development of
12 affordable housing and the importance of SB 1333 and 166 to addressing the state’s housing crisis;
13 they should be allowed to intervene.

14 **III. Intervention will not enlarge the issues or otherwise delay this case.**

15 While the Proposed Interveners seek to join this suit to protect their organizational rights
16 and interests in the potential outcome of the suit, the legal defenses and issues asserted by Proposed
17 Interveners are similar to those already asserted in the litigation and based on the same facts.
18 Proposed Interveners also do not seek to delay any proceedings or alter deadlines in the case.
19 Intervention will not enlarge the issues or change the relationship between plaintiffs and defendants,
20 and the original parties remain able “to conduct their lawsuit on their own terms.” *See Rominger*,
21 147 Cal. Ap. 3d at 661.

22 **IV. The reasons for intervention outweigh any opposition.**

23 The reasons for intervention outweigh any opposition. Proposed Interveners and their
24 members have a direct and immediate interest in the validity of SB 166 and 1333 and in ensuring
25 charter cities meet their regional housing needs. Housing California and CCRH must intervene to
26 protect their interests in the production and preservation of very low- and low-income housing. As
27 discussed above, appellate courts have consistently allowed the beneficiaries of a law to intervene
28 in litigation challenging that law, and more than once have found refusal to allow intervention in

1 such a case to be an abuse of discretion. *Timberidge Enterprises*, 86 Cal. App. 3d at 881-82; *Utah*
2 *Ass'n of Counties v. Clinton*, 255 F.3d at 1255 (listing cases where intervention found appropriate
3 because government would not adequately represent organizational interest). Plaintiffs cannot
4 demonstrate any prejudice because of intervention. Proposed Interveners have sought intervention
5 at the early stages of this case, and will not enlarge the issues. As such, the balance of interests
6 strongly supports permitting Proposed Interveners to participate in this lawsuit.

7 **V. The application is timely made.**

8 While § 387(a) requires that parties seeking to intervene must make a “timely”
9 application, intervention has been found timely at any point in the litigation where otherwise
10 appropriate, even after judgment. Code Civ. Proc. § 387(a); *Mallick v. Super. Ct.*, 89 Cal. App. 3d
11 434, 437 (1979) (intervention granted after judgment); *Ziani Homeowners Ass’n v. Brookfield Ziani*
12 *LLC*, 243 Cal. App. at 283 (reversing trial court ruling that had denied intervention on the basis of
13 timeliness). This case remains at its initial stages: the State filed a General Denial to the City’s
14 Petition for Writ of Mandamus and Complaint for Declaratory Relief on March 8, 2019. No
15 significant motions have been filed. This motion is timely.

16 **CONCLUSION**

17 For the foregoing reasons, Housing California and CCRH respectfully request that the Court
18 grant them leave to intervene pursuant to Code of Civil Procedure § 387(c).

19
20 Dated: June 27, 2019

Respectfully submitted,

21
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