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*Exempt from Filing Fees
Government Code § 6103*

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

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO, HALL OF JUSTICE COURTHOUSE

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

19 Petitioners and Plaintiffs,

20 v.

21 **THE CITY OF HUNTINGTON BEACH, a**
22 **municipal corporation; CITY COUNCIL**
23 **OF HUNTINGTON BEACH; AL**
24 **ZELINKA, in his official capacity as City**
25 **Manager of Huntington Beach; and DOES**
26 **1-50, inclusive,**

27 Respondents and Defendants.
28

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

**NOTICE OF MOTION AND MOTION
FOR TEMPORARY RELIEF AND A
PRELIMINARY INJUNCTION**

(Gov. Code, §§ 65753, subd. (b), 65757.)

Date: February 16, 2024
Time: 11:00 a.m.
Dept.: C-69
Judge: Hon. Katherine A. Bacal
Trial Date: None set
Action Filed: March 8, 2023

1 PLEASE TAKE NOTICE that on February 16, 2024, at 11:00 a.m. in Department C-69 of
2 the San Diego Superior Court, which is located on the fifth floor of the Hall of Justice, located at
3 330 West Broadway, San Diego, California 92101, Petitioners the People of California and the
4 California Department of Housing and Community Development (“HCD”) will move for
5 temporary relief pursuant to Sections 65753, subdivision (b), and 65757 of the Government Code,
6 as well as for a preliminary injunction.

7 Petitioners make this request on the following grounds. First, they have a probability of
8 success on the merits of their First Cause of Action in their First Amended Petition for Writ of
9 Mandate and Complaint for Declaratory and Injunctive Relief. The First Cause of Action alleges
10 that the City has violated the Housing Element Law (see Gov. Code, § 65580, et seq.) by failing
11 to adopt a revised housing element for the current planning cycle. The City Council was required
12 to do so by October 15, 2021, and despite having two opportunities to adopt a draft housing
13 element duly prepared by its own professional planning staff, the City Council declined to do so.
14 The City is thus in clear violation of the Housing Element Law. This Court thus has the discretion
15 to grant temporary relief in accordance with Section 65757 of the Government Code.

16 Second, this Court is not in a position to hold a merits hearing on the First Cause of Action
17 in accordance with the mandatory timeframes of Section 65753. Petitioners requested a hearing
18 on June 12, 2023. Within 30 days of that request, a hearing was required to be set for a date
19 within 120 days of the request. (Gov. Code, § 65753, subd. (b).) A hearing has still not been set,
20 and it will not be set until October 20, 2023, which is 130 days from the date Petitioners made the
21 request. By not timely setting a hearing, the Court has taken action that has the same practical
22 effect as a continuance of a hearing on the merits of Petitioners’ First Cause of Action until well
23 beyond the final day to hold such a hearing. (See *ibid.*) Under these circumstances, this Court
24 must grant temporary relief authorized under Section 65757. (See *ibid.*)

25 Petitioners seek an order, pursuant to paragraph (a)(4) of Section 65755 of the Government
26 Code, mandating the approval, on a streamlined and ministerial basis, of all projects to affordable
27 housing developments as defined under the Housing Accountability Act (the “HAA”),
28

1 notwithstanding any contrary planning and zoning laws that the City already cannot enforce by
2 operation of the HAA. (See Gov. Code, § 65589.5, subds. (d)(5), (h)(3).)

3 Petitioners also seek an order, pursuant to paragraph (a)(4) of Section 65755 of the
4 Government Code, mandating the approval, on a streamlined and ministerial basis, of all housing
5 development projects that would have qualified for by-right treatment under the Housing Element
6 Law, specifically subdivision (h) of Section 65583.2 of the Government Code, had the City
7 adopted its planning staff's proposed draft housing element revision dated March 10, 2023. The
8 specific sites are identified in table B-14 in appendix B of the draft housing element revision
9 dated March 10, 2023. These are referred to herein in as the RHNA sites.

10 To effectuate the relief specified in the above paragraph, Petitioners also seek a preliminary
11 injunction that would enjoin the City from enforcing its planning and zoning laws to disapprove
12 or reduce the density of any proposed housing development meeting the minimum densities under
13 Section 65583.2 of the Government Code on any of the RHNA sites. For any such project, the
14 City could not, as basis of disapproval or reducing density, issue findings of noncompliance,
15 inconsistency, or nonconformity pursuant paragraph (2) of subdivision (j) of Section 65589.5,
16 should the Court grant this order. The City could continue to enforce policies and standards that
17 facilitate development at the maximum density on an inventory site that would be allowable
18 under the City's draft housing element revision and that are consistent with meeting the City's
19 fair share of the regional housing need. (See Gov. Code, § 65589.5, subd. (f)(1), (j)(4).

20 Petitioners also seek an order, pursuant to paragraphs (a)(1) through (a)(3) of Section 65755
21 of the Government Code, suspending the City's authority to approve any new development on
22 any RHNA site that would not satisfy the minimum density requirements under Section 65583.2
23 of the Government Code.

24 In granting temporary relief, the Court cannot enjoin any housing developments that
25 comply with applicable provisions of law and that may be developed without having an impact on
26 the City's ability to properly adopt and implement an adequate housing element. (Gov. Code, §
27 65753, subd. (b).)

28

1 These requests are supported by the accompanying Memorandum of Points and Authority,
2 Declaration of Melinda Coy and supporting exhibits, Declaration of Matthew T. Struhar and
3 supporting exhibits, and Request for Judicial Notice.

4
5
6 Dated: September 5, 2023

Respectfully submitted,

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



13 MATTHEW T. STRUHAR
14 Deputy Attorney General
15 Attorneys for Petitioners and Plaintiffs, the
16 People of California ex rel. Rob Bonta,
17 Attorney General, and the California
18 Department of Housing and Community
19 Development

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **The People of California ex rel. Rob Bonta v. City of Huntington Beach**
No.: **30-2023-01312235-CU-WM-CJC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On September 5, 2023, I served the attached **NOTICE OF MOTION AND MOTION FOR TEMPORARY RELIEF AND A PRELIMINARY INJUNCTION** by transmitting a true copy via electronic mail addressed as follows:

Michael E. Gates, City Attorney
Michael Joseph Vigliotta
Nadin S. Said
Office of the City Attorney
City of Huntington Beach
2000 Main St., Fourth Floor
Huntington Beach, CA 92648
Email: Michael.Gates@surfcity-hb.org;
MVigliotta@surfcity-hb.org;
Nadin.Said@surfcity-hb.org;
Chris@surfcity-hb.org;
michele.hoffman@surfcity-hb.org

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 5, 2023, at Sacramento, California.

Leticia Aguirre
Declarant



Signature