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Requests And Inquiries Regarding Development Do Not Constitute A Current Or Imminent Threat Under Planning And Zoning Law In Order To Justify Enactment Of Urgency Ordinance.

The City of Huntington Park is a small, densely populated working-class city in Los Angeles County. The City has approximately 59,000 residents and twenty (20) schools, of which six (6) are charter schools. Huntington Park has more than twice the number of schools than are needed to serve the City's school-age population. The high number of schools attracts students from outside the City, which contributes to traffic, parking, and noise problems in the neighborhoods where the schools are located.

In the fall of 2016, the Huntington Park City Council identified a need for more diverse land uses, such as retail, commercial businesses, and other revenue-generating operations. At the same time, the City reported "a proliferation of inquiries and requests for the establishment and operation of charter schools." The City requested that the City Council enact an urgency ordinance to impose a temporary moratorium on the establishment, construction, and development of new charter schools in the City.

In September 2016, the City Council enacted an urgency zoning ordinance, under the authority of Government Code section 65858, the Planning and Zoning Law to impose a 45-day moratorium on the "approval or issuance of licenses, permits or other entitlements for the establishment, construction, and development of charter schools." The following month, the City Council extended the moratorium for an additional 10 months and 15 days.

The California Charter Schools Association ("CCSA") challenged the City's action in Superior Court seeking a court order directing the City to invalidate the ordinance on the grounds that it failed to comply with the requirements of the Planning and Zoning Law. The trial court refused, denying the order, and CCSA appealed.

On appeal, CCSA challenged the City's finding of current and immediate threat public health, safety, or welfare, which is required under Section 65858. CCSA argued that when the City Council enacted the ordinance no actual development applications for charter schools were pending.

CCSA relied on a previous case, *Building Industry Legal Defense Foundation v. Superior Court*, to argue that "current and immediate threat" means that the approval of an entitlement or use is imminent, and that inquiries and requests regarding potential future uses do not meet the definition. In *Building Industry*, a city adopted an urgency ordinance suspending the processing

of development applications after a developer applied to build a residential subdivision. The court in *Building Industry* held that processing a development application did not constitute a current and immediate threat under Section 65858.

The Court of Appeal concluded that *Building Industry* was persuasive. The Court indicated that while issuing a building permit or approving a development application are acts that give the landowner the right to proceed with development, submission of an application to the City merely starts the process, and the City retains the power to subsequently deny the application.

The Court of Appeal stated that the City of Huntington Park retained discretion, when reviewing individual permit applications, to deny the permit or impose additional conditions, and that, therefore, the inquiries and requests by charter school operators could not possibly present an imminent threat to the City.

The Court of Appeal held that the City's urgency ordinance was not valid under Section 65858 because mere inquiries and requests do not constitute a current and imminent threat within the meaning of the statute.

California Charter Sch. Ass'n v. City of Huntington Park (2019) 35 Cal. App. 5th 362.

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