

Huntington Beach v. Newsom, RHNA, HCD, and state housing law

Posted by: [Bob Silvestri](#) - March 16, 2023 - 2:22pm

The City of Huntington Beach (the “CITY”) in Southern California has been [in the news recently](#) in its battle to push back on state housing laws, the Department of Housing and Community Development (HCD), and the Regional Housing Needs Allocation process. However, in response to Governor Gavin Newsom’s and State Attorney General Rob Bonta’s threats to continue to prosecute the City until it submits to the will of HCD, the City has now taken the bold action of filing a “Complaint for Declaratory Relief: Injunctive Relief” to bring its case before the U.S. District Court in California, with a “Demand for Jury Trial.”

A full copy of the Complaint can be read [HERE](#).

Their allegations of violations of the law by the state and all the named defendants are wide-ranging, some fairly straightforward and others being pretty novel. Still, it’s time many of the issues raised in this Complaint had their day in court. Their action [joins other recent court cases](#) that are of lesser scope, but support many of the same arguments made by Huntington Beach.

The case, filed by Huntington Beach City Attorney, Michael E. Gates, is titled as follows:

CITY OF HUNTINGTON BEACH, a California Charter City, and Municipal Corporation, the HUNTINGTON BEACH CITY COUNCIL, MAYOR OF HUNTINGTON BEACH, TONY STRICKLAND, and MAYOR PRO TEM OF HUNTINGTON BEACH, GRACEY VAN DER MARK

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity as Governor of the State of California, and individually; GUSTAVO VELASQUEZ in his official capacity as Director of the State of California Department of Housing and Community Development, and individually; STATE LEGISLATURE; STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS; and DOES 1-50, inclusive,

THE COMPLAINT

It's a broad salvo, not just against state housing laws and agencies but also against the individuals who have been threatening legal action against Huntington Beach. The violations of law alleged in the City's Complaint leave no stone unturned.

It includes,

- VIOLATION OF FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION FOR COMPELLED SPEECH
- VIOLATION OF FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION FOR PROCEDURAL DUE PROCESS
- VIOLATION OF FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION FOR SUBSTANTIVE DUE PROCESS
- VIOLATION OF THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION (U.S. CONST., ART. I, § 8, CL. 3)
- VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE XI (CHARTER CITY AUTHORITY)
- VIOLATION OF CALIFORNIA GOVERNMENT CODE §§ 65583 *ET.*
- VIOLATION OF CALIFORNIA CONSTITUTION SEPARATION OF POWERS
- VIOLATION OF THE CALIFORNIA CONSTITUTION, ILLEGAL BILL OF ATTAINDER (U.S. CONST., ART. I, § 10)
- VIOLATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUBLIC RESOURCES CODE §§ 21000 *ET. SEQ.* (CEQA))
- VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE IV, SECTION 16 (SPECIAL STATUTE), and
- FRAUD

The Complaint opens with a clear statement of its objectives,

“By this Complaint the Plaintiff(s), **seeks a declaration invalidating, and an order enjoining, the enforcement of California Government Code Sections 65583, 65583.1, 65583.2, 65583.3, 65584, 65584.01, 65584.02, 65584.03, 65584.04, 65584.045, 65584.05 65584.06, 65584.07, 65584.09, 65584.2, 65585** of Title 7 of the Government Code (which provides State Planning and Land Use Laws), these aforementioned Government Code Sections as a subset is commonly known as the

“Regional Housing Needs Allocation Laws” (hereinafter “RHNA Laws”).” [Emphasis added]

In plain English, the City is asking the court to strike down the validity and enforcement of all the major housing laws that make up the juggernaut known as the RHNA quota process and the prosecutorial penalties involved.

In the Complaint’s “Introduction,” the City lays out one of its main arguments, when it states,

“This Complaint arises from violations of the U.S. Constitution and California Constitution and State Statutes, i.e., the Governor, the Director, HCD, SCAG, and other Defendants have commandeered the **rightful and constitutional autonomy and Charter City authority of the City** regarding local land use matters.” [Emphasis in original text]

It goes on to address the various allegations of violations noted above. Here are some of the selected allegations and arguments brought in this case.

The City writes,

“...recent legislation in the form of Housing Laws and RHNA Laws as defined above, have not only suddenly stripped the City of its former Charter City authority to making local zoning decisions and plan for itself, the Housing Laws and RHNA Laws also impermissibly delegate (legislative) authority **to HCD to make its own rules, methods, and formulas, and to provide unbridled oversight and draconian-level enforcement** over the City through the RHNA process. In other words, the Defendants through legislative action have illegally commandeered the City’s rightful, independent Constitutional authority to zone for itself as a Charter City under Article XI, Section 5(a).” [Emphasis added]

And,

“The State, through the enforcement of the RHNA Laws, *force* the City Council to “say” through its Statement of Overriding Consideration, which is absolutely required by CEQA, something that the City Council may not otherwise choose to say, may not believe to necessarily be true, e.g., that the benefits of the proposed high-density housing outweigh the negative impacts on the City’s environment. This is not only forcing the

City Council to engage in bad government, it is *forcing* the City Council to “choose” high-density housing over protecting the environment, and it is *forcing* the City Council to “say” both in speeches and in writing that protecting its environment is not a priority – completely contrary to the spirit and strictures of CEQA itself.” [Emphasis in original text]

And,

“Moreover, the State’s recent Housing and RHNA Laws impede on City’s *independent legislative authority* and claim to *prevent judicial review of the HCD administrative rulings*, which *clearly* violates constitutional principles of Separation of Powers and Procedural and Substantive Due Process afforded by the U.S. Constitution and the California Constitution.” [Emphasis in original text]

“The RHNA Laws are vague and ambiguous (at best) and create a flawed process that mandates that the City of Huntington Beach zone for of 13,368 RHNA Units. The RHNA Laws **violate the U.S. Constitution, the California Constitution, and Federal and State law.**“ [Emphasis added]

“In 2022, the State’s Independent Auditor determined that the State’s/HCD’s 2021 calculations created using flawed RHNA Laws, were erroneous, concluding: [Emphasis added]

“HCD does not satisfactorily review its needs assessments to ensure that staff accurately enter data when they calculate how much housing local governments must plan to build... **HCD could not demonstrate that it adequately considered all of the factors that state law requires...** This insufficient oversight and lack of support for its considerations risks eroding public confidence that HCD is informing local governments of the appropriate amount of housing they will need.” [Emphasis in original text]

It ends the Introduction section by saying,

“By this Complaint the Plaintiff(s), seeks a Declaration from this Court that the State’s RHNA Laws are invalid and an Order enjoining the enforcement thereof against Plaintiff(s) and other cities similarly situated.” [Emphasis added]

“Plaintiff(s), and on behalf all others similarly situated, brings this lawsuit seeking a Declaration and Injunction to define the limits of a State’s police power. The U.S. Constitution provides such limits, specifically prohibiting unfettered and unchecked “police power” of the State and administrative agencies, like HCD. The issues raised in this Complaint are novel and complex and are of such importance that they can long longer go without judicial review in Federal Court.”

THE FLAWED RHNA PROCESS

In its arguments regarding the RHNA quota process, the City argues,

“In the current, 6th Planning Cycle, RHNA Plan, the flawed data and disproportionately high (13,368) RHNA Units have caused Plaintiff(s) **the impossible task of meeting these exceedingly high demands while trying to balance other State law(s)**, other necessary zoning considerations, and community needs.” [Emphasis added]

But they also argue that the RHNA quotas are wildly inflated and they bring in [the findings of the Office of the State Auditor](#) to back up their claims, saying,

“HCD’s 2018 Statewide Housing Assessment [SHA] stated that from 2015- 2025, approximately 1.8 million new housing units are needed to meet projected population and household growth. This is 180,000 new homes annually.”

“Governor GAVIN NEWSOM included building 3.5 million homes by 2025 as part of his 2018 campaign for Governor. This is almost double the amount of housing need calculated in HCD’s 2018 SHA.”

Later in the Complaint, in a separate section entitled, “Fraud,” they go on to accuse Governor Newsom and the state of knowingly falsifying these housing numbers calculations. But their takedown of HCD and the RHNA process permeates the entire complaint.

VIOLATION OF CALIFORNIA CONSTITUTION SEPARATION OF POWERS

In this section, the city states,

“The State has impermissibly delegated its authority to administrative agencies the Director, HCD, and SCAG, [the COG for Huntington Beach] which have created administrative regulations that, according to the State, have the effect of law regarding

the process to certify Housing Elements. Failure to follow these administrative regulations means the City's Housing Element may not be certified. Failure to certify the Housing Element subjects a City to excessive fines and penalties under the Housing Laws and RHNA Laws. **Under this impermissible delegation, the unelected officials of HCD, including the Director, and SCAG, essentially act as and unaccountable shadow legislature, arbiter of disputes, and the enforcement agency – all without any accountability to the public.** [Emphasis added]

VIOLATION OF CALIFORNIA CONSTITUTION, ARTICLE XI

The City also argues that the defendants have violated their rights and powers as a Charter City under the California Constitution, in part, because,

“Section 5(a) of Article XI of the California Constitution provides that a Charter City shall not be governed by State law in respect to “Municipal Affairs.” Rather, “so far as ‘Municipal Affairs’ are concerned,” Charter Cities’ laws are “supreme and beyond the reach of [State] legislative enactment.” (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 35 Cal.3d 1, 12.)

“Regulation of local land use and local zoning are vital and core functions of local government, and are therefore “Municipal Affairs” of a Charter City. (*City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) Cal.App.4th 868, 874).”

VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Here the City argues that state housing law is in direct conflict with CEQA, resulting in a lose/lose situation for local administrators,

“RHNA Laws require the City to make a “Hobson’s Choice,” i.e., that the local legislature, the City Council, is required to adopt a “Statement of Overriding Consideration” pursuant to California Environmental Quality Act (“CEQA”) in order to justify, as a matter of environmental impact, the massive increase in high density housing, or not adopt a “Statement of Overriding Consideration” required by CEQA (because the high density zoning is not justified in light of requisite environmental concerns) and not zone for the massive high density housing mandated by the RHNA Laws and Defendants, but then face crippling penalties and lawsuits from Defendants. The RHNA Laws (and Housing Laws) are pitted against CEQA, **thereby putting the City Council in an impossible, irreconcilable impasse.**” [Emphasis added]

Note that this argument gets even more obtuse if an individual case involves the "Builder's Remedy," whereby a developer is demanding rezoning or greater densities than allowed, otherwise, irrespective of the State Density Bonus laws. As such, a recent analysis by Holland & Knight stated that "the intersection between Builder's Remedy and California Environmental Quality Act (CEQA) remains untested."

Similarly, a white paper by the UC Davis School of Law argues that numerous ambiguities exist in this area. For example, it notes,

"The HAA is codified as part of the Housing Element Article of the Government Code. The Least Cost Zoning Law, which was enacted as a companion to the Housing Element Law, provides that a city shall not be required to zone any parcel in an urbanized, residential area for "densities that exceed those on adjoining residential parcels by more than 100%." (Gov't Code § 65913.1(b).) A court might construe this as an implied limitation on the density of a builder's remedy project."

And, in particular, that regulations such as the "Builder's Remedy" may be held by the courts to violate the home-rule prerogatives of charter cities.

VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION

The City goes even further with allegations of violations of their constitutional rights under both the California Constitution and the U.S. Constitution. For example, they argue that the entire construct, administration, and enforcement of California's state housing laws and the Housing Element and RHNA quota process violates the city's First Amendment and Fourteenth Amendment rights.

"The Housing Laws, including RHNA Laws as defined above, go far beyond regulating conduct and illegally *force*, in tyrannical fashion, the City to not only conform to the specific political speech of the State, but these laws *force the City Council Members to make specific statements* of "State speech," specific findings consistent with "State speech", and make specific votes pre-approved by the State regarding, and related to, "need for housing" in violation of the City Council Members' and the City's, First Amendment rights under the U.S. Constitution. (*Shurtleff v. City of Boston*, (2022) 142 S. Ct. 1583, that governments have protected First Amendment "speech" and; *Expressions Hair Design v. Schneiderman*, (2017) 137 S. Ct. 1144, finding against the State compelling "speech")" [Emphasis in original text]

And the city's Fourteenth Amendment rights,

“City of HB, as a Municipal Corporation, is a “person” within the meaning of Fourteenth Amendment, and is entitled to its protection. (*River Vale v. Orangetown*, 403 F.2d 684, 1968 (2d Cir. 1968)). Plaintiff(s), the City of Huntington Beach, was not created by the State. In fact, the City, invoking Article XI of the California Constitution, created itself by adopting a Charter and incorporating as Municipal Corporation. For decades, the U.S. Supreme Court has viewed Corporations as “persons” entitled to Fourteenth Amendment protections, and then most recently, First Amendment Protections under *Citizens United v. Federal Election Commission*, *supra*.”

“The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that no State can “deprive any person of life, liberty, or property, without due process of law.” (U.S. Const. Amend. XIV§ 1, cl. 3.)”

“The procedural component of the Due Process Clause prohibits the Defendants (and particularly the State's administrative agencies HCD and SCAG) from creating processes that deprive municipalities and citizens of rights and property without providing a fair process before or after the deprivations have occurred.”

“The Fourteenth Amendment safeguards fundamental rights of persons and of property against arbitrary and oppressive state action. (*Thomas Cusack Co. v. Chicago*, 242 U.S. 526, 37 S. Ct. 190, (1917)). Involvement of State officials may provide State action essential to show direct violation of City's Fourteenth Amendment rights, whether an official's actions were officially authorized, or lawful. (*Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 98 S. Ct. 172, (1978)).”

“The State Legislature amended the RHNA process to *eliminate judicial review* of decisions and determinations by the Director, HCD, and/or SCAG when it amended Section 65584(c)(4). This violates Plaintiff(s)'s Procedural Due Process rights because the process begins and ends with HCD.” [Emphasis in original text]

“In addition, the State's Housing Laws and RHNA Laws are violative of the City's Procedural Due Process rights insofar as the State claims preemptive authority over the City's Constitutional Charter City Home Rule authority, yet ***there is no State law whatsoever that specifically provides that the City must plan for 13,368 units of high density RHNA housing units in this Planning Cycle.*** In fact, this number of 13,368 RHNA Units of high-density development for the City was created by a flawed

administrative process through the Director, HCD, and SCAG, *and not State law*. Since this number of 13,368 RHNA Units is administratively-created and not passed by the State Legislature and signed by the Governor into law, it does not have the force and effect of State law, and therefore can have no pre-emptive power over the City's Constitutional Charter City Home Rule authority. How can an administrative agency's administratively created "mandate" preempt a Charter City's Constitutional authority? It cannot. This "mandate" and the Housing Laws and RHNA Laws that have produced this absurdity violate Plaintiff(s)'s Procedural Due Process rights." [Emphasis in original text]

ALLEGATIONS OF FRAUD

Finally, the Complaint alleges that Gavin Newsom, the Director of HCD, and the Southern California Council of Governments knowingly committed acts of fraud to promote their personal housing agenda.

"For years, the State, including State actors such as Governor GAVIN NEWSOM, HCD, the Director, and SCAG have claimed that there is a "housing crisis," that housing is not affordable and that more housing needs to be developed in order to deal with the "housing crisis." The State, including State actors such as Governor GAVIN NEWSOM, have told the public and cities that the homelessness crisis, among other societal concerns, is a symptom of the "housing crisis."

"The State, including State actors such as Governor GAVIN NEWSOM, HCD, the Director, and SCAG have also told the public and cities that if cities were forced to plan for and build more affordable housing, then housing prices would drop, becoming more affordable, and the homelessness situation would be cured."

"The public and cities, for years, relied upon the statements made by the State, including actors such as Governor GAVIN NEWSOM, HCD, the Director, and SCAG believed that planning for more housing and building more housing might be a solution to the stated problems."

"In reality however, the statements made by the State, including actors such as Governor GAVIN NEWSOM, HCD, the Director, and SCAG were not true and the State and actors such as Governor GAVIN NEWSOM, HCD, the Director, and SCAG knew they were no true."

“Governor GAVIN NEWSOM, HCD, the Director, and SCAG have made intentional misrepresentations about the need for additional housing units. Under concealment of material facts known to Defendant(s) with regard to population and the methodology used to create and allocate the various high density RHNA unit numbers, including the City’s 13,368 units, Defendant(s) have deprived the City of its legal rights, and has forced the City to rely upon the intentional misrepresentations to plan for building over 13,368 additional, unnecessary, high density units.”

“In reality however, the statements made, and the issuance of the 13,368 high density RHNA “mandate” by the State, including actors such as the Governor GAVIN NEWSOM, HCD, the Director, and SCAG were not true and the State and actors such Governor, GAVIN NEWSOM, HCD, the Director, and SCAG knew they were not true.”

SUMMARY

Although it is unlikely that the City will prevail in all of their causes of action in this case, regardless of the outcome their Complaint touches on all of the fundamental flaws and injustices that are embodied in the gigantic, contradictory, hodge-podge of rules, regulations, standards, guidelines, and directives, most made up out of whole cloth, coming from the State Legislature, HCD, and the Governor’s Office that make up what is being called “state housing law.”

If this Complaint only serves to shine sunlight on all this, it will have done California taxpayers an enormous public service and will likely illuminate some of the real reasons why California housing law is not producing low-income housing for those most in need.

Bob Silvestri is a Marin County resident, the Editor of the Marin Post, and the founder and president of [Community Venture Partners](#), a 501(c)(3) nonprofit community organization [funded by individuals](#) and nonprofit donors. Please consider [DONATING TO THE MARIN POST AND CVP](#) to enable us to continue to work on behalf of all California residents.