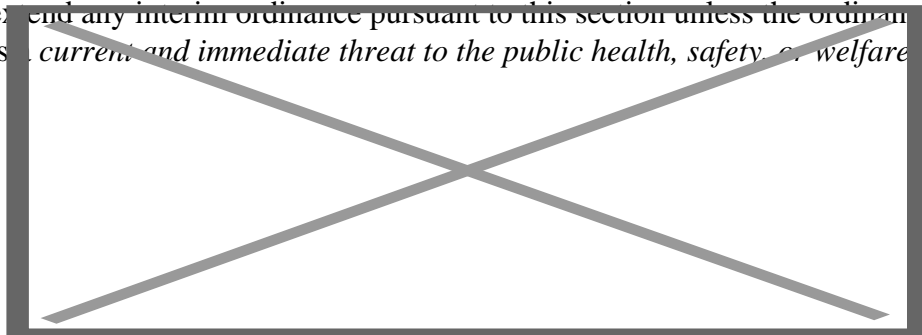


Possibility of Further Applications for New Charter Schools Did Not Constitute “Current and Immediate Threat” Warranting Adoption of Urgency Ordinance Imposing Moratorium on Processing Such Applications.

The court of appeal held that an urgency ordinance enacted to impose a temporary moratorium on the establishment and operation of new charter schools in Huntington Park was invalid. *California Charter Schools Association v. City of Huntington Park, et al.*, 35 Cal. App. 5th 362 (2019). The court reasoned that "numerous inquiries and requests for the establishment and operation of charter schools" did not amount to a "current and immediate threat to the public health, safety or welfare" as required by Government Code section 65858(c). Section 65858 allows a city to adopt an interim ordinance that prohibits any uses that may conflict with a general plan the city is considering, studying, or intends to study within a reasonable time. Gov't Code § 65858. Subdivision (c) attaches conditions to that power by providing that "[t]he legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a *current and immediate threat to the public health, safety, or welfare*" (Emphasis added.)



Huntington Park is a general law city

in southeastern Los Angeles County. Of the twenty schools in the city, six are charter schools. In September 2016, the Huntington Park City Council enacted a forty-five-day urgency ordinance (later extended by an additional ten months and fifteen days) that imposed a temporary moratorium on the establishment and operation of new charter schools in the city in response to concerns about traffic and congestion. The City Council found that many of the students attending the charter schools were not residents of Huntington Park and were contributing to traffic, parking, and noise problems in the city's neighborhoods. The assistant city attorney described the congestion as a public safety issue and police and representatives from the school district formed a "traffic task force" to address the congestion problems. The proposed interim ordinance was intended to give staff time to assess whether the Huntington Park Municipal Code ("HPMC") was adequate to ensure that future charter schools were developed in a manner that protected the public and satisfied the goals and objectives of Huntington Park's general plan. The ordinance contained findings that a current and immediate threat to public health existed because, among other reasons, Huntington Park had received "numerous inquiries and requests for the establishment and operation of charter schools," "the HPMC did not have development standards specifically for charter schools," and "certain locations in Huntington Park had already experienced adverse impacts from charter schools." The court of appeal found that the facts presented did not meet the urgency standard under section 65858, relying heavily on *Building Industry Legal Defense Foundation v. Superior Court*, 72 Cal. App. 4th 1410 (1999). In that case, the city adopted an urgency ordinance after a developer sought approval of a residential subdivision. In rejecting the urgency ordinance, the *Building Industry* court held that processing a development application did not constitute a current and immediate threat because: Formal submission of the

application to the city's planning department merely starts the wheels rolling and allows the city, the developer, and public to begin the environmental review process. It does not guarantee the landowner any right to an approval of the proposed project. As always, the city retains the power to deny it. The *California Charter* court found that "[i]f processing a filed application as in *Building Industry* does not pose a current and immediate threat to the public health, safety, or welfare because no rights will vest imminently," then mere inquiries and meetings prior to submitting an application could not possibly present a current and immediate threat to public health, safety, or welfare under Section 65858 to justify an urgency ordinance.

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