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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, TORRANCE COURTHOUSE**

11 **Community of Abalone Cove,**

12
13 Plaintiff/Petitioner.

14 vs.

15 **City of Rancho Palos Verdes, et al.**

16
17 Defendants /
18 Respondents.

) Case No.: 24TRCP00352

) **Petitioner Community of Abalone**
) **Cove's Opposition to Respondents'**
) **Demurrer**

) Hearing Date: January 3, 2025
) Time: 8:30 a.m.
) Dept.: B

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1 Petitioner / Plaintiff Community of Abalone Cove (“Abalone Cove”) opposes the
2 demurrer filed by Respondents / Defendants the City of Rancho Palos Verdes and the City Council
of Rancho Pales Verdes (together, “the City”), as follows:

3 **Summary of Opposition**

4 The City amended its municipal code on June 18, 2024. This amendment upzoned a lot
5 located adjacent to Abalone Cove from single-family to high-density, multi-family housing. And—in
6 the City’s words— “superseded” previous, identical zoning ordinances adopted via urgency
7 procedures. Within the statutorily required ninety days, Abalone Cove petitioned the Court to
8 invalidate the June 18 amendment. (Gov. Code, § 65860, subd. (b)(2) [giving interested parties 90
9 days to “bring an action” regarding the “amendment of any existing zoning ordinance”].)

10 The City concedes these facts. Despite this, it asks the Court to dismiss the Petition because
11 Abalone Cove did not *also* challenge the “*superseded*” identical amendments passed two months and
12 two weeks earlier, respectively. In its demurrer, the City argues that when it amends its municipal
13 code with an identical ordinance that supersedes a prior ordinance, a petitioner must *also* challenge
14 the earlier, superseded ordinance. This nonsensical position would preempt the statute of
15 limitations proscribed by Government Code section 65860 by artificially compressing the timeframe
16 to one set instead by the date of passage of an already “superseded” ordinance which (inexplicably)
17 remains “still in effect” according to the City.

18 The City offers no applicable legal authority to support this argument. And there is none.
19 The City is preempted from truncating the statutory rights of community members to challenge a
20 zoning ordinance. When the City amended its municipal code on June 18, 2024, “the last
21 amendment repeal[ed] the first” and the latter became the only “operative” ordinance as soon as it
22 went into effect. (*Garber v. Levit* (2006) 141 Cal.App.4th Supp. 1, 6.) At that point, any challenge to
23 the prior “superseded” ordinances became moot. Abalone Cove would have wasted judicial
24 resources (and its own) by challenging all three. Instead, it attacked the sole operative ordinance
25 within the 90-day statute of limitations.

26 The Court should deny the City’s demurrer on the first four causes of action, which it bases
27 on a lack of “subject matter jurisdiction,” and thereby reject the City’s attempt to shorten the statute
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1 of limitations, insulate its decisions from judicial review, and rob citizens of Rancho Pales Verdes of
2 the opportunity to be heard. The Court should also deny the City’s challenge to the Coastal Act
3 claim because the City’s upzoning of the Clipper Lot is a change in density to this environmentally
4 sensitive coastal property and, therefore, “development” under the express terms of the Coastal Act.

5 **I. Facts**

6 **A. Until 2024, the Clipper Lot was reserved for single-family use as a sensitive coastal area with
7 minimal commercial development.**

8 The Community of Abalone Cove is a homeowners’ association made up of eighty
9 homeowners in a single-family home community located near Abalone Cove in Rancho Palos
10 Verdes, California, a city of about 40,000 residents. (Petition, ¶ 4.) Abutting the Community is an
11 empty lot surrounded almost entirely by single-family residences. (*Id.*, ¶¶ 24–26.) The empty lot—
12 known as the “Clipper Lot”—sits in the City’s Coastal Zone, an “extreme geological hazard area,”
13 within a half mile of the Portuguese Bed / Abalone Cove Landslide Complex, and a natural
14 vegetation and wildlife corridor and FEMA flood zone. (*Id.*, ¶¶ 27–30.) The Clipper Lot sits in the
15 middle of a low-density, ecologically fragile, residential coastal community. (*Id.*, ¶ 25.)

16 **B. The City revises its Housing Element to upzone the Clipper Lot to maximum residential
17 density, despite its unfitness for development and lack of impact on affordable housing.**

18 The City of Rancho Pales Verdes receives from the state and county government an
19 allocation of housing units that it must construct to ensure an adequate supply of housing.
20 (Petition, ¶¶ 16–17.) The City then adopts and submits plans for this new housing for the state to
21 approve, deny, or request modifications. (*Id.* ¶ 19.) This proposal is called the City’s “Housing
22 Element,” which the City passed in March 2024 after revisions required by the state. (*Id.*, ¶ 21.)

23 The City’s most recent Housing Element increased the density of the Clipper Lot from R-4
24 to RM-22, the maximum residential density in the City. (Petition, ¶¶ 34–36.) RM-22 allows for five
25 times the density of RM-4, essentially mandating that the lot contain a planned unit development
26 (e.g., condos or townhomes) and the negative geological burden and impact on ecology and
27 established land use patterns that necessarily come with it. (*Id.*, ¶¶ 37–39.)
28

1 The upzoning of the Clipper Lot was a reversal by the City, which had consistently refused
2 to allow the previous owner to upzone it. (Petition, ¶¶ 42, 105.) The City acknowledged the Clipper
3 Lot is a poor site for development and would not address affordable housing. The City found that
4 the Clipper Lot “has constraints with drainage, layout, and open space requirements”—restricting
5 development to only half the site—and, compared to other sites for building homes, the “only site in
6 the City’s Coastal Zone” and “further away from commercial areas.” (*Id.*, ¶ 39.) And the City
7 admitted that the re-zoning would not provide the City with additional affordable housing. (*Id.*, ¶ 7
8 [“removal of the [Clipper Lot] ... would not impact the City’s ability to meet its [regional housing
9 needs allocation] obligation”].)

10 The City’s about-face with regard to the Clipper Lot coincided with the purchase of the lot
11 by a client of the then-mayor’s (John Cruikshank) engineering firm in 2022. (Petition, ¶¶ 103–115)
12 Suddenly, the Clipper Lot became a prime target for maximum-density housing.

13 **C. The City amends its Municipal Code to upzone the Clipper Lot.**

14 The City passed an ordinance to amend the zoning of the Clipper Lot on June 18, 2024.
15 This amendment went into effect “on the 31st day after its passage,” or July 19. (City’s RJN, Ex. 3,
16 at pp. 294, 298.) Specifically, Ordinance 681 described itself as “an Ordinance ... Amending”
17 various chapters of “the Rancho Pales Verde Municipal Code.” (*Id.*, at p. 294.) Through Ordinance
18 681, “the Rancho Palos Verdes Zoning map is **hereby amended** ... to revise certain parcels to
19 Residential Multiple m-22 [*sic*]...” (*Id.*, at p. 298 [emphasis added].) This existing operative
20 ordinance is what Abalone Cove challenges.

21 Before approving the current amendment, Ordinance 681, the City passed two urgency
22 ordinances with “the same amendments” as Ordinance 681. (Demurrer, at p. 12:26–13:1; *id.*, 12:16–
23 17 [all three ordinances “mirror” one another].) The urgency ordinances allowed the Clipper Lot
24 upzoning to go into “immediate effect,” as opposed to 31 days after passage. (*Id.*, at p. 12:20.) The
25 City passed the first urgency ordinance (678U) on April 16 and the second (680U) on June 4. (City’s
26 RJN, Exs. 1, 2.) The June 4 (680U) amendment was identical to the April 16 (678U) amendment
27 other than including a statement that “clarifications requested by [the state] ... do not constitute
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1 substantive revisions and are not required for substantial compliance” with the State Housing
2 Element Law. (*Id.*, Ex. 3 at p. 154 [§ 3].)

3 On the same day that the City passed 680U (June 4), it also introduced and waived the first
4 reading of the permanent, and identical, but non-urgency Ordinance 681. (Demurrer, at p. 12:16-18
5 [“City Council voted to introduce Ordinance No. 681—the Rezoning—that mirrored the content of
6 Ordinance Nos. 678U and 680U, including language to rezone the Clipper Lot from the RS-4 zone
7 to the RM-22 zone.”], citing RJN Exs. 3 and 6.)

8 Throughout, Abalone Cove challenged each amendment. The Community sent letters on
9 April 1, June 4, and June 18 detailing the significant problems with dramatically increasing the
10 density of the geologically fragile coastal community. (Petition, ¶¶ 21, 45–50, Ex. 1.) Members of
11 Abalone Cove spoke at each of the hearings in April and June, explaining their concerns in person.
12 (*Id.*, ¶ 47.) But the City repeatedly disregarded these community members.

13 To summarize: over Abalone Cove’s objections, the City amended its municipal code in
14 three separate actions, two urgency ordinances (678U and 680U) that went into immediate effect,
15 then a third regularly passed ordinance (681) that went into effect thirty-one days later. The City
16 admits that Ordinance 681 “contained the same amendments to the City’s Zoning Ordinance that
17 Ordinance Nos. 678U and 680U contained, including rezoning the Clipper Lot” and “**superseded**
18 **Ordinance Nos. 678U and 680U.**” (Demurrer, at pp. 12:26–13:2 [emphasis added].) When the final
19 ordinance (681) went into effect on July 19, the ordinance challenged by Abalone Cove, was the
20 last, only, and operative amendment to the municipal code governing the zoning of the Clipper Lot.

21 II. Procedural History

22 Once the City passed the ordinance amending the municipal code and re-zoning the Clipper
23 Lot on June 18, interested parties in Rancho Pales Verdes had ninety days to file and serve a
24 challenge. (Gov’t Code, § 65860 sub. (b)(2) [ninety days to challenge “[t]he amendment of any
25 existing zoning ordinance”].) The City acknowledges that Abalone Cove filed and served its
26 Petition challenging Ordinance 681 by September 12—less than ninety days after its passage on
27 June 18. (Demurrer, at p. 20:4-5.)
28

1 In its Petition, Abalone Cove alleges in its First Cause of Action for Writ of Mandate that
2 the zoning amendment violates the City’s General Plan and Municipal Code by fundamentally
3 altering the neighborhood character, being incompatible with surrounding development patterns,
4 failing to properly analyze environmental impacts under CEQA by relying on contradictory
5 information about geological hazards, and ignoring the site’s designation in the Coastal Specific
6 Plan. (Petition, ¶¶ 78–101, 126–134.)

7 In its Second Cause of Action for violations of the Coastal Act, Abalone also alleges that
8 the upzoning violates the Coastal Act because the Clipper Lot is in an “extreme geological hazard
9 area,” prone to flooding, and serves as a wildlife corridor—environmental concerns which were
10 inadequately analyzed. (Petition, ¶¶ 135–152.)

11 Finally, in its Third and Fourth Causes of Action, Abalone Cove alleges that Mayor John
12 Cruikshank violated the Political Reform Act (3rd) and common law conflict of interest principles
13 (4th) by participating in and voting on the rezoning despite having a disqualifying financial interest
14 based his engineering firm’s business relationship with the lot’s owner. (*Id.*, ¶¶ 102–125, 153–172.)

15 The City demurred to the Petition. It asserts a “general” demurrer under C.C.P. section
16 430.10(a) to the first, second, third, and fourth causes of action for lack of jurisdiction because each
17 “cause of action is moot.” (Demurrer, at p. 7.) It asserts as “special” demurrer under C.C.P. section
18 430.10(e) for failure to state a claim to the second cause of action. (*Id.*, at 8.)

19 III. Legal Standard

20 The only issue the court may resolve on a demurrer is whether the complaint, standing
21 alone, states a cause of action under any possible legal theory. (*Gervase v. Superior Court* (1995) 31
22 Cal.App.4th 1218, 1224.) “[A]ll material facts pleaded in the complaint and those that arise by
23 reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring
24 party. The complaint must be construed liberally by drawing reasonable inferences from the facts
25 pleaded.” (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 517 [citations omitted].)

1 **IV. Argument**

2 In demurring to the allegations of Abalone Cove, Defendant resorts to a series of meritless
3 procedural and technical objections, all of which are unfounded and may be easily rejected.

4 **A. “Mootness” is not a basis to challenge this Court’s subject matter jurisdiction.**

5 The City argues that this Court “lacks jurisdiction over” causes of action 1–4 because they
6 are “moot.” (Demurrer, at p. 7 [relying on Code Civ. Proc., § 430.10, subd. (a)] [“The court has no
7 jurisdiction of the subject of the cause of action alleged in the pleading.”].) But the City cites no
8 case law or other basis for the use of mootness as a jurisdictional challenge, and relevant authority
9 shows that “mootness” is not a proper basis to challenge jurisdiction.

10 **1. Subject matter jurisdiction exists unless the Court has no authority whatsoever.**

11 Subject matter jurisdiction “relates to the inherent authority of the court involved to deal
12 with the case or matter before it.” (*Brown v. Desert Christian Center* (2011) 193 Cal.App.4th 733, 740
13 [citations and quotations omitted].) A court has a “lack of subject matter jurisdiction” only when
14 there is an “entire absence of power to hear or determine a case.” (*Miller-Leigh LLC v. Henson* (2007)
15 152 Cal.App.4th 1143, 1148–1149.)
16

17 **2. The City cites authority that supports the Court has subject matter jurisdiction.**

18 The City relies on two cases, neither of which support its assertion that this Court can
19 dismiss this case for lack of jurisdiction based on mootness. First it cites *In re D.P.*, a family law case
20 involving a juvenile with no applicability to a civil court. *In re D.P.* discussed the mootness of an
21 appeal (not an underlying suit), and that, in fact, undermines the City’s position. (Demurrer at pp.
22 16:6-12 [citing *In re D.P.* (2023) 14 Cal.5th 266, 276].)

23 There, the jurisdictional issue was not a civil court’s subject matter jurisdiction, but the
24 jurisdiction of the court over a juvenile because a child has suffered or risks suffering physical harm.
25 (*Id.*, at p. 273.) A juvenile court had determined it had jurisdiction over the child under the Welfare
26 and Institutions Code; the parents appealed; and while on appeal, the juvenile court terminated its
27 jurisdiction over the juvenile. (*Id.*) The California Supreme Court acknowledged that the parents’
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1 appeal was “moot because Father ... has not demonstrated a specific legal or practical
2 consequence” that would stem from a ruling. (*Id.*) But the Court did not dismiss the case for lack of
3 jurisdiction: it held instead that “the Court of Appeal has discretion to review the case **even though**
4 **it is moot.**” (*Id.*, at p. 273 [emphasis added].) If anything, this case reflects that mootness is not a
5 recognized basis to challenge subject matter jurisdiction.

6 The City also cites *Wozniak v. Lucutz* for the claim that “the Court lacks jurisdiction when ...
7 the Court has no power to provide effective relief.” (Demurrer, at p. 10 [citing *Wozniak* (2002) 102
8 Cal.App.4th 1031, 1040].) But that case does not even contain the words “moot” or “mootness,” let
9 alone state that a court lacks jurisdiction based on mootness. In fact, the Court states that it may
10 have “jurisdiction over the subject matter” even if “it has no power ... to give certain kinds of
11 relief.” (*Id.*, at p. 1040.) *Wosniak* directly undermines the City’s claim that a court can dismiss a case
12 for “mootness” because it “has no jurisdiction of the subject of the cause of action alleged in the
13 pleading” (the grounds of the City’s demurrer under C.C.P. section 430.10(a).) *Wosniak* actually
14 holds that a court retains subject matter jurisdiction even if the City’s argument on mootness were
15 correct. (*Id.*, at 1040; *see also Conservatorship of O’Connor* (1996) 48 Cal.App.4th 1076, 1087
16 [distinguishing “subject matter jurisdiction” from when a court may act in excess of jurisdiction].)

17 “Mootness” cannot deprive this Court of its authority to adjudicate this case. While the
18 Community explains below why the City’s mootness argument is incorrect, the Court should deny
19 the challenge to this Court’s subject matter jurisdiction on the threshold issue that the City has not
20 stated any basis that would strip this Court’s power over this dispute.

21
22 **3. This Court can render effective relief by invalidating Ordinance 681 because it is the only ordinance controlling the zoning of the Clipper Lot.**

23 The City’s primary argument is that urgency ordinances passed previously continue to loom
24 actively in the background despite admitting that these prior versions were “superseded” by the
25 operative ordinance challenged in this action. (Demurrer, at pp. 9:14–11:3, 15:22–17:12.)

26 The word “supersede” concedes the truth. As defined in the Ninth Edition of Black’s Law
27 Dictionary “supersede” means “to annul, make void, or repeal by taking the place of.” (See K.C.
28 Mehr Decl., Ex. 1 [“the 1996 statute supersedes the 1989 act”]). Courts agree. (*E.g.*, *Garber, supra*,

1 141 Cal.App.4th Supp. at p. 7 [“Where a section is amended by two different acts, passed at
2 different times, the last amendment repeals the first and operates as the only amendment to the
3 original action section.”] [citations, quotations, textual changes omitted].)

4 Each time the City amended its municipal code to re-zone the Clipper Lot, it concedes it
5 “superseded” and repealed the previous amendments. Ordinance 680U repealed Ordinance 678U,
6 then Ordinance 681 repealed Ordinance 680U. There is only one operative, controlling amendment
7 for Abalone Cove to challenge regarding the zoning of the Clipper Lot: 681.

8 **4. Amendments repeal previous ones.**

9 “Where a section is amended by two different acts, passed at different times, the last
10 amendment repeals the first and operates as the only amendment to the original.” (*Garber, supra*,
11 141 Cal.App.4th Supp. at p. 7; *see also id.* at p. 6 [“When a statute is amended by two different acts,
12 the one passed later in time is the operative law.”]; *see also Coca Cola Bottling Co. v. Feliciano* (1939) 32
13 Cal.App.2d 351, 354; *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263
14 Cal.App.2d 41, 54 [“When a later statute supersedes or substantially modifies an earlier law but
15 without expressly referring to it, the earlier law is repealed or partially repealed by implication.”]
16 [citing cases and a treatise].)

17 The issue of whether a subsequent amendment repeals a previous one typically arises when
18 they are inconsistent, and a court must decide if an amendment’s inconsistency with the previous
19 statute indicates an intent to repeal it. By passing identical amendments, that first step of the
20 analysis is unnecessary: The same law on the same issue repeals all previous ones.

21 **5. When the City amended its municipal code to re-zone the Clipper Lot, it repealed the 22 previous amendments.**

23 On its face, Ordinance 681 amends the Municipal Code to alter the zoning of the Clipper
24 Lot. (City’s RJN, Ex. 3 at p. 298 [“Title 17 (Zoning) of the Rancho Palos Verdes Municipal Code is
25 hereby amended...”].) The City admits this basic fact. (Demurrer, at p. 11:5–12:2 [all three
26 ordinances “amended the City’s Zoning Code ... including changing the Clipper Lot’s zoning;”
27 “[Ordinance 681] contained the same amendments to the City’s Zoning Ordinance and Map” at the
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1 urgency ordinances]”). By amending the zoning code regarding the Clipper Lot, Ordinance 681
2 “repealed” the previous urgency ordinances and “operates as the **only amendment** to the original,”
3 i.e., the original designation of the Clipper Lot. (*Garber, supra*, 141 Cal.App.4th Supp. at p. 7
4 [emphasis added].)

5 The previous ordinances were not merely superseded; they were repealed. Here, the City (for
6 whatever reason) decided to pass three consecutive ordinances amending the municipal code
7 regarding the Clipper Lot. Each new amendment repealed the previous one, leaving only the last in
8 time “operative” for purposes of challenging the change in zoning. (*Id.* at p. 6.) Ordinance 681 was
9 a “special act applicable to a particular subject,” making it unequivocally “controlling over” the
10 earlier ordinances. (*Coca Cola Bottling, supra*, 32 Cal.App.2d at p. 354 [“the statute last approved,
11 particularly if it be a special act applicable to a particular subject, is controlling over a statute
12 previously adopted by the legislature.”].)

13 In that situation, the previous statute is not repealed “if they may stand together.”
14 (*Sacramento Newspaper Guild, supra*, 263 Cal.App.2d at p. 54.) The City’s unusual decision to pass
15 three identical amendments demands that the previous ordinances be treated as repealed. It is
16 impractical and impossible for these three ordinances to “stand together.” Identical consecutive
17 ordinances cannot logically co-exist because that would create an unworkable legal regime where
18 multiple versions of the same law purport to simultaneously govern the same subject matter, making
19 it impossible for citizens to know which version controls and defeating the fundamental purpose of
20 legal amendments, which is to replace rather than supplement existing law. How would a
21 community member know which amendment controls? How could the designation of the Clipper
22 Lot be clearly identified? Replacing one law with an identically worded and codified law and
23 expecting the two to co-exist creates an absurdity.

24
25 **6. The City offers no controlling or applicable legal authority for the continuing legal effect
of the urgency ordinances.**

26 The City asserts that the Court must dismiss the first four causes of action for a lack of
27 subject matter jurisdiction because the Court cannot grant “effective relief” to Abalone Cove.
28 (Demurrer, at pp. 7, 15–16.) Ordinance 681 adopted amended versions of Rancho Palos Verdes

1 Zoning Code Chapters 17.10, 17.48, and 17.96, *in their* entirety. If the Court invalidated Ordinance
2 681, the City’s argument goes, the previously passed, “superseded” urgency ordinances would
3 remain in place: “setting aside the Rezoning [amended via Ordinance 681] would result in the
4 Clipper Lot reverting to the zoning approved in Ordinance Nos. 678U and 680U.” (*Id.*, pp. 10:11-
5 13.) Even though the City admits that Ordinance 681 **superseded** the urgency ordinances—and
6 Ordinance 681 expressly amends the municipal code—it had, according to the City, no legal effect
7 on the previous ordinances which remain forever in place, waiting to be resuscitated. As discussed,
8 this position is contrary to basic California law regarding the effect of amendments.

9 The City presents no controlling legal authority for the position that amendments to the
10 zoning of a property have no effect on previous amendments. It cites only the opening section of
11 Rancho Palos Verdes Municipal Code (“RPVMC”), Title 1 – General Provisions, Chapter 1.01 –
12 Adoption of Code – section 1.01.080 – Validity of Code. (Demurrer, at p. 10:11-16.) There, the
13 Code states that if one section “of this Code is ... held to be invalid,” the “remaining portions of
14 this Code” shall not be affected. It then makes the declaration that if the **entire Code** is “declared
15 invalid or unconstitutional,” then whatever preceded the Code (the “original ordinance”) shall
16 remain in effect. This code section plainly applies to the situation in which the *entire Code* is
17 invalidated, so that there is some governing structure to fall back on.

18 But the City cites this section for the much broader and inapplicable position that invalidating
19 Ordinance 681 “would result in the Clipper Lot reverting to the zoning approved” in the urgency
20 ordinance.” (Demurrer, at p. 10:9-16.) If anything, it supports the opposite conclusion. When an
21 amendment is invalidated, the code returns to the “original.” Here, the “original” and current
22 zoning of the Clipper Lot is R-4. (*Id.*, at p. 11:6-8; *see also id.*, p. 17:22-23.) The two urgency
23 ordinances and the regular ordinance were amendments to it. (RJN, Exs. 1–3.) If applicable,
24 Section 1.01.080 would then be best understood as “reverting to” the “original,” R-4 zoning.
25 (RPVMC § 1.01.080 [“the original ordinance shall be in full force and effect”]; Demurrer, at p. 20:4-
26 5 [“the RS-4 zoning classification for the Clipper Lot remains in full effect to date”].)

1 The City cites no applicable authority for the assertion that if the Court invalidates
2 Ordinance 681, the zoning reverts to 680U. This argument is contrary to basic California law
3 regarding the operation of amendments. The Court must reject it.

4
5 **7. Urgency zoning ordinances are intended to be temporary measures, which the City**
6 **confirmed by passing the amendment to the zoning of the Clipper Lot through regular**
7 **ordinance procedure.**

8 California allows cities to pass ordinances through “regular” or “urgency” procedures.
9 (Gov’t Code, §§ 36930–36934 [regular ordinances] 36937 [urgency ordinances].) When a city can
10 make appropriate urgency findings, a city may adopt an ordinance on an urgency basis which
11 allows the ordinance to take immediate effect, rather than the usual thirty days after a second
12 reading and passage. (*Id.*, 36937, 65858(a).)

13 The State established a specific urgency procedure that cities must follow to adopt
14 ordinances “prohibiting any uses that may be in conflict with a contemplated general plan.” (*Id.*, §
15 65858.) The city must provide findings that “that there is a current and immediate threat to the
16 public health, safety” that justifies the immediate action. (Gov. Code, § 65858, subd. (c); Gov. Code,
17 § 36937, subd. (b) An urgency ordinance under section 65858 is effective for a maximum of 45 days.
18 (Gov. Code, § 65858, subd. (a).)

19 The City passed its urgency amendments in accordance with section 36937 procedure,
20 despite providing purported “Urgency Findings” under Government Code section 65580, the
21 statute which addresses the affordable housing crisis. (Demurrer, at p. 9, n. 1 [citing Exs. 1 & 2]; Ex.
22 2 at pp. 151–154.) By using section 36937 urgency statute instead of section 65858 one, the City
23 attempted to avoid the 45-limit on the ordinance.

24 But the temporary nature of section 65858’s limit on the effectiveness of urgency ordinances
25 illuminates the nature of urgency ordinances with regard to zoning. They are not intended to be
26 used in place of regularly passed ordinances. Instead, they are intended to be temporary measures.
27 Affected citizens lose the thirty-day window to stop the implementation of the ordinance only when
28 a city can properly articulate the need for “immediate preservation of the public peace, health or
safety.” When a municipality decides, as the City did here, to amend the same zoning code with a

1 regular ordinance and insulate itself from having its “urgency findings” attacked, the temporary
2 urgency ordinance is repealed and no longer operative¹. This result is not only mandated by basic
3 statutory interpretation discussed above, but also by the very nature of an urgency ordinance. It is
4 intended to act only as an extreme and temporary measure.²

5
6 **8. If an interested party must challenge previous, “superseded” amendments, they are
subject to even more extreme procedural hurdles than those already in place.**

7 Any petitioner already faces stringent procedural hurdles when challenging a zoning code
8 amendment. When the change is purportedly intended to increase available housing, Government
9 Code section 65009 demands that parties first raise the “issue ... at the public hearing”. (Gov. Code,
10 § 65009, subd. (b).) Next, for all zoning changes, any petition challenging the zoning change must
11 not just be **filed** within 90 days, but also **served**, further truncating an already short period. (Gov.
12 Code, § 65009, subd. (c)(1); Gov. Code, § 65860, subd. (b).)

13 The City asks the Court to add another roadblock to these already strict procedural
14 requirements. According to the City, an interested citizen must challenge not only the current,
15 operative zoning amendment to the property at issue, but also all other prior amendments –
16 regardless of when they were passed or whether they were effectively repealed.

17 This position turns judicial economy and mootness on its head. Once the regularly passed
18 ordinance (681) went into effect, the urgency ordinance (680U) was replaced. Ordinance 680U
19 served only to allow the zoning change to go into effect immediately. As of July 19, the identical
20 regular ordinance controls the zoning. And in fact, any challenges to the urgency ordinances after
21 July 18 are moot because the regular ordinance is operative. (*In re D.P.* (2023) 14 Cal.5th 266, 276 [a
22

23 ¹ See, e.g. California Cities “Ordinances and Resolutions: Practice Tips for Effective Legislation”
24 [https://www.cacities.org/uploadedfiles/leagueinternet/53/530f101f-f778-47cf-8995-
25 3fca3e8ba129.pdf](https://www.cacities.org/uploadedfiles/leagueinternet/53/530f101f-f778-47cf-8995-3fca3e8ba129.pdf) [“Consider the adoption of an identical “back up” ordinance by way of the
26 usual procedure (two readings), if there is any doubt regarding the defensibility of the urgency
clause. If the urgency clause is successfully challenged, the non-urgency version of the
ordinance will already be effective.”].

27 ² See, e.g., Attorney General Bonta Issues Legal Guidance for Local Governments Attempting to
28 Skirt State Housing Laws, July 17, 2023, available at [https://oag.ca.gov/news/press-
releases/attorney-general-bonta-issues-legal-guidance-local-governments-attempting-skirt](https://oag.ca.gov/news/press-releases/attorney-general-bonta-issues-legal-guidance-local-governments-attempting-skirt).

1 decision is moot if it “cannot affect the matter in issue in the case before it”).) Despite the City’s
2 verbose argument, the reverse is not true.

3 The unstated but important consequences of the City’s argument are that (1) a petitioner
4 must now bring two or more claims or separate lawsuits when challenging a zoning amendment to a
5 particular property, and (2) a citizen or entity’s statute of limitations to challenge a regularly passed
6 ordinance preceded by an urgency one is not 90 days to file and serve, as the statutes require, but,
7 instead, whatever truncated length of time stems from the passing of the urgency ordinance.

8 There is no legal or practical basis to allow the City to re-write California law and strip the
9 already-limited rights that interested parties have to challenge zoning ordinances. If accepted, the
10 City’s legal theory would allow cities to insulate zoning changes from challenge through procedural
11 manipulation. A city would receive not just the benefits of the urgency ordinance (immediate
12 effectiveness) and the regular ordinance (no need to provide a statement of immediate public
13 need)—it would also truncate and preempt the statutory deadline to challenge the regular
14 ordinance. This is exactly what the City proposes here: That Abalone Cove’s deadline to challenge
15 Ordinance 681 expired on July 15—less than one month after its passage. (Demurrer, at p. 10:25.)
16 The Court should not adopt a legal theory that reduces a citizen’s rights under California law to
17 challenge a zoning amendment.

18 In a writ proceeding, the Court is empowered by the principles of equity to ensure that
19 “substantial justice” is achieved. (*County of Inyo v. City of Los Angeles* (1976) 61 Cal.App.3d 91, 96
20 [“Mandate proceedings ... are governed by equitable principles. [cite] Equity molds its decree by the
21 configurations of substantial justice as perceived by the chancellor.”]; *Times-Mirror Co. v. Superior*
22 *Court* (1935) 3 Cal.2d 309, 331 [in a writ proceeding, “[e]quity ... will assert itself in those situations
23 where right and justice would be defeated but for its intervention.”].) The City asks this Court to
24 prevent Abalone Cove from challenging an action affecting its community, and it must not do so.

25 **9. The Community satisfied the statute of limitations for all causes of action.**

26 The City correctly states that Abalone Cove’s Public Records Act (3rd cause of action) and
27 common law conflict of interest (4th cause of action) are governed by a ninety-day statute of
28

1 limitations. Abalone Cove asserts that this 90-day statute stems from Government Code section
2 65860(b)(2), which applies to the “amendment of any existing zoning ordinance.” The City disputes
3 this, claiming that, instead, the 90-day statute in Government Code section 65009, which covers a
4 broad range of housing-related activity, applies. (Demurrer, at p. 21:10-18.)

5 The City offers no legal basis for why the more specific code section would not trump the
6 general code section. (*See, e.g., Gonzalez v. County of Tulare* (1998) 65 Cal.App.4th 777, 786
7 [analyzing these codes sections and noting that “[w]hen two statutes relate to the same subject,
8 ordinarily the more specific and particular provision will govern as against the more general
9 provision, although the latter standing alone is broad enough to include the subject addressed by the
10 more particular provision.”].) In addition, while beyond the scope of the demurrer, section 65009
11 imposes notice requirements that the City did not comply with.³

12 Regardless of which 90-day statute applies, Abalone Cove served and filed the suit within 90
13 days, as the City admits. (*E.g., Demurrer*, at p. 21:4-5 [writ petition filed and served by September
14 12, 2024, less than 90 days after June 18]). For this reason, there is no basis to dismiss this action for
15 failure to satisfy the applicable statute of limitations.

16 **10. The Clipper Amendment is “development” under the Coastal Act.**

17 The City argues that Abalone Cove cannot maintain this cause of action for three reasons:
18 (1) the change in zoning is not "development" under the Coastal Act, even though that change is "in
19 the density or intensity of use of land" (Pub. Resources Code, § 30106), (2) the Coastal Commission
20 has not yet certified the upzoning of the Clipper Lot, so it cannot be challenged; and (3) the City
21 complied with the Coastal Act. (Demurrer, at p. 17:16—20:9).

24 ³ Specifically, the City did not issue the required notice (Gov. Code, § 65009, subd. (b)(2) [“If
25 a public agency desires the provisions of this subdivision to apply to a matter, it shall
26 include in any public notice issued pursuant to this title a notice substantially stating all of
27 the following: “If you challenge the (nature of the proposed action) in court, you may be
28 limited to raising only those issues you or someone else raised at the public hearing
described in this notice, or in written correspondence delivered to the (public entity
conducting the hearing) at, or prior to, the public hearing.”].)

1 On the first issue, “development” under the Coastal Act is given “an expansive
2 interpretation.” (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783,
3 796.) “Development” “is not restricted to physical alteration of the land” and “goes beyond what is
4 commonly regarded as development of real property.” (*Id.* [holding that the Coastal Act applies to a
5 proposed conversion of a mobile home park from tenant occupancy to resident ownership].) The
6 definition of “development” in the Coastal Act includes “change in the density or intensity of use
7 of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act ..., and any
8 other division of land, including lot splits.” (Pub. Resources Code, § 30106.) Based on the plain
9 reading of the statute, together with the “expansive interpretation” of the term to include actions
10 “beyond what is commonly regarded as development of real property,” the upzoning of density is
11 “development” under the Coastal Act.

12 The City acknowledges *Pacific Palisades* but states that “there is no known case law
13 construing the definition of “development ... to include a local government’s decision to rezone a
14 property.” (Demurrer, at pp. 18:22–19:6.) This lack of case law is an admission that no municipality
15 has sought to dismiss an action on the grounds that the City has here. Upzoning is a “change in the
16 intensity of the use of land,” and, therefore, “development.”

17 The City’s second argument is that the Community’s challenge is premature: the City has
18 “not ‘developed’ the Clipper Lot as defined by the Coastal Act, because the rezoning from the RS-4
19 zone to the RM-22 zone is not yet effective.” (Demurrer, at p. 11:6-8; *see also id.*, p. 17:22-23 [“the
20 rezoning of the Clipper Lot ... is not yet effective since it is pending certification by the Coastal
21 Commission”].)

22 This argument—that Abalone Cove filed too early—contradicts the rest of the City’s
23 demurrer, which asserts that Abalone Cove challenged the ordinances too late. Once again, the City
24 wants to have it both ways. It claims that any challenge to the upzoning of the Clipper Lot must
25 have been filed by mid-July 2024, but the amendment’s violation of the Coastal Act cannot be
26 challenged for an indefinite period. This would far exceed the 90 days (or less) by which the
27 amendment must be challenged. There is no basis to dismiss Abalone Cove’s Coastal Act cause of
28 action for being premature. While the amendment is not yet “effective,” it is nevertheless open for

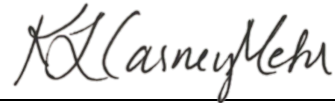
1 this Court’s review (which the City does not dispute with regard to Abalone Cove’s writ petition)
2 and should not be excluded from a case with the same corpus of facts and law.

3 Finally, the City argues it did nothing more than pass an amendment to be reviewed and
4 denied or approved by the Coastal Commission, so, despite acting as an independent legislative
5 body, it could not have violated the Coastal Act. (Demurrer, at p. 19:26–20:9.) The City absolves
6 itself from its findings and process that resulted in the Clipper Lot amendment—and the conflicts
7 with the Coastal Act (*see* Petition, ¶¶ 140–143)—by making it a mere intermediary to the Coastal
8 Commission. As with the “prematurity” argument, the Court should not defer from ruling on the
9 Coastal Act when all the facts and law are interwoven with the amendment’s violation of the City’s
10 General Plan, as asserted in the Writ. (*Id.*, ¶¶ 127–130.)

11 **V. Conclusion**

12 For the foregoing reasons, the Community of Abalone Cove respectfully requests the Court
13 deny the City’s demurrer.

14
15 Dated: December 18, 2024

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19 **CARNEY MEHR, A LEGAL**
20 **CORPORATION**

21 *Attorneys for Petitioner*
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