

# Numerous Inquiries and Requests to Open Charter Schools Not Enough for Moratorium Ordinance

05.24.2019

Local agencies cannot adopt moratoria based on “mere” inquiries, requests, and meetings with potential applicants. A recent ruling by the California Court of Appeal stressed that urgency interim zoning ordinance measures may only be adopted in cases where a threat to public health, safety, and welfare actually is “imminent.”

In *California Charter Schools Association v. City of Huntington Park*, the Court considered a challenge to a temporary moratorium on the establishment, construction, and development of new charter schools. The moratorium was a response to resident complaints regarding traffic, parking, and noise issues associated with the 20 existing charter schools concentrated within Huntington Park’s 3.1 square mile area. Although there were no applications actually pending at the time the urgency ordinance was adopted, staff reported that the City had received “at least five inquiries” as well as “several serious sit down discussions” with charter school representatives in the previous year. Based on these inquiries, the City Council made a finding that a “current and immediate threat” to public health, safety, and welfare existed, necessitating the adoption of an interim prohibition on the establishment of charter schools. An association of charter schools challenged the moratorium ordinance.

The Court found that the charter schools’ pre-application contacts with the City did not rise to a “current and immediate threat” as required by Government Code Section 65858(c). In interpreting the statute, the Court relied on a previous case that found that formal submission of an application to a planning department was not a threat because actual approval of an entitlement was not “imminent.” The Court stated: “If processing a filed application ... does not pose a current and immediate threat to the public health, safety, or welfare because no rights will vest imminently, then mere inquiries, requests, and meetings, preliminary to submitting a CUP application, cannot possibly present that threat.”

If you have any questions, or would like more information about how the decision may affect your agency, please contact **Isra Shah**.