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New California housing lawsuits face major obstacles, attorney says

State courts have ruled for 40 years that charter cities must obey state housing laws.



The Huntington Beach pier sits blocks from Surf City neighborhoods. The city and state recently sued each other over Huntington Beach's claim it's immune from state housing laws. (Photo by Jeff Gritchen, Orange County Register/SCNG)

By **JEFF COLLINS** | JeffCollins@scng.com | Orange County Register

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[Huntington Beach](#), Redondo Beach and three other Los Angeles County cities are the latest to challenge [the state's ability to enforce housing laws](#) in California's 121 charter cities.

[Huntington Beach filed a federal lawsuit](#) March 9, challenging the constitutionality of the state's 53-year-old homebuilding mandates.

Redondo Beach, Torrance, Carson and Whittier jointly filed a lawsuit last year challenging Senate Bill 9, which allows homeowners to build up to four homes on a single-family lot.

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Charter cities from San Mateo to San Jose, from Berkeley to Los Angeles have a long history of battling the state over "home rule" authority.

[Daniel Golub](#), a San Francisco-based land use and housing law attorney with Holland & Knight, has argued [leading cases regarding charter city authority and housing law](#) and [has written on the topic](#).

We asked him to clarify how the law affects charter cities. The interview has been edited for length and clarity.



Andrew Jean-Pierre, of Berkeley, swings on an abandoned backhoe at People's Park in Berkeley, Calif., on Monday, Feb. 27, 2023. After a California appeals court blocked a proposed housing project at the park due to concerns raised through the California Environmental Quality Act, discussion over reforming that law has reached a fever pitch. (Jane Tyska/Bay Area News Group)

Q: What, in a nutshell, is a charter city?

A: State law provides a set of requirements governing how city governments must operate. By default, a city is subject to those general requirements, and so most cities are “general law” cities.

But a city can also decide that it wishes to adopt its own “charter,” which is essentially a local government constitution. Once a city has adopted a charter, the city’s internal operations are governed by the city’s own charter rather than the state’s “general law.”

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The California Constitution also gives charter cities an important – but importantly limited – exemption from complying with certain state laws, but only within the field of “municipal affairs.”

Q: Can charter cities ignore state housing laws?

A: No. State law prevails over local law. And the courts have said – over and over

As the California Supreme Court put it as far back as 1976, “municipalities are not isolated islands remote from the needs and problems of the area in which they are located.”

When an issue primarily affects people in one locality – such as locally imposed taxes – courts have affirmed that the state should not interfere with the decisions charter cities make about how to govern their own affairs.



Daniel Golub (courtesy of Holland & Knight)

But as the Supreme Court put it in 1988, municipal action “which affects persons outside of the municipality becomes ... a matter which the state is empowered to prohibit or regulate.”

Housing is obviously within that category.

One city’s decision to refuse to allow new housing has a profound effect outside of that city because it makes housing less affordable for all. We can’t possibly have any effective or equitable approach to meeting the statewide housing crisis if some cities are subject to housing laws and other cities are allowed to opt-out.

In sum, I’m not aware of any published case in which a court affirmed any

A: There are published court opinions going back 40 years rejecting charter cities' arguments that they are immune from complying with state housing laws.

They include the 1982 case *Los Angeles v. California*, finding that charter cities had to obey a state law requiring a city's zoning ordinances to be consistent with its general plan.

In 2019, [a state appeals court ruled the city of San Jose](#) is subject to the state's Surplus Land Act, which requires cities to prioritize affordable housing when disposing of city-owned property.

In 2021, an appeals court ruled Berkeley and other charter cities are subject to Senate Bill 35, which requires streamlined approval of affordable housing projects when cities and counties fall behind state homebuilding goals. That year, [an appeals court also ruled](#) that San Mateo and other charter cities must comply with the Housing Accountability Act.

Other decisions confirm that laws like the Housing Element law (requiring municipalities to plan for future housing needs), and state laws regarding housing discrimination and accessory dwelling units also apply to charter cities.



Homes north of the pier in Huntington Beach, California on Thursday, March 9, 2023.
(Photo by Jeff Gritchen, Orange County Register/SCNG)

A: Given the nearly 40 years of apparently unbroken authority holding that charter cities are not exempt from complying with state housing law, I expect such challenges to face substantial obstacles.

Housing is not a purely local issue, and courts have consistently noted that it is not the role of the judiciary to second-guess (how) the state's elected lawmakers decide to regulate a statewide issue. As I noted, courts have specifically affirmed state laws that govern accessory dwelling units, as well as the Housing Accountability Act, against charter city "home rule" challenges.

If a city is getting good legal advice, they presumably have been informed how strong the case law is on the other side of this question. For a city to proactively reach out to create a legal dispute on these questions strongly suggests to me this has more to do with politics than with the law.

Q: Why did Huntington Beach file its latest lawsuit in federal court?

A: The only reason to make a federal case out of this dispute is if there is some question of federal law at issue.

Huntington Beach is arguing that many decades-old state housing laws actually violate the U.S. Constitution, and so that's why those claims are in federal court.

Once those federal issues are addressed, it's questionable whether a federal court will also entertain Huntington Beach's charter city challenge and other state-law arguments, since the usual rule is that federal courts leave those questions of state law for state courts to resolve.

Even if a federal court does hear those claims, I wouldn't expect this to change the outcome considerably. Although federal courts are not bound to follow the published opinions of California appellate courts, they typically give them significant weight.

Daniel Golub

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Past experience: Represents housing developers, nonprofit organizations and public agencies in the courts and in the permitting and entitlement process, focusing particularly on California's housing laws. He briefed and argued CARLA vs. San Mateo, the leading published authority on California's Housing Accountability Act.

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For more than a decade, Jeff Collins has followed housing and real estate, covering market booms and busts and all aspects of the real estate industry. He has been tracking rents and home prices, and has explored solutions to critical problems such as Southern California's housing shortage and affordability crisis. Before joining the Orange County Register in 1990, he covered a wide range of topics for daily newspapers in Kansas, El Paso and Dallas. A Southern California native, he studied at UC Santa Barbara and UC Irvine. He later earned a master's degree from the USC School of Journalism.

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