

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 04/30/2015

TIME: 09:12:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Terry Ray

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2015-00008725-CU-TT-CTL** CASE INIT.DATE: 03/13/2015

CASE TITLE: **San Diego Transportaon Association vs San Diego Metropolitan Transit System**

**[E-FILE]**

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

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**EVENT TYPE:** Ex Parte

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**APPEARANCES**

There are no appearances by any party.

The Court having taken the above-entitled matter under submission on 4/28/15 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

**RULINGS AFTER ORAL ARGUMENT:** The Court rules on plaintiff San Diego Transportation Assn.'s (Petitioner) motion for preliminary injunction as follows:

After taking the matter under submission, the Court confirms its tentative ruling.

*Respondent San Diego Metropolitan Transit System's Request for Judicial Notice.* The request for judicial notice filed with the moving papers is granted. The request for judicial notice filed with the reply is denied.

*Respondent's Evidentiary Objections.* The Court rules as follows:

*Hueso Declaration.* As a preliminary matter, the court notes that Petitioner did not contest the objections to Objection Nos. 12, 14, 17, 19-20, 25-38, and 40-41. Objection Nos. 1, 7 are overruled. Objection No. 2 is sustained on the ground of lack of foundation. Objection No. 3 is sustained on the grounds of lack of foundation, overbreadth, vague and ambiguous. Objection No. 4 is sustained on the grounds of overbreadth and lack of foundation. Objection No. 5 is sustained on the grounds of improper opinion and mischaracterization of evidence. Objection No. 6 is sustained on the ground of improper opinion. Objection No. 8 is sustained on the grounds of best evidence and improper opinion. Objection No. 9 is sustained on the grounds of lack of foundation, lack of personal knowledge, and improper opinion.

Objection No. 10 is sustained on the grounds of best evidence and improper opinion. Objection No. 11 is sustained on the grounds of best evidence, lack of personal knowledge, and lack of foundation. Objection No. 13 is sustained on the grounds of best evidence and improper opinion. Objection No. 15 is sustained on the grounds of best evidence, hearsay, and lack of foundation. Objection No. 16 is sustained on the grounds of lack of personal knowledge and lack of foundation. Objection No. 18 is sustained on the grounds of hearsay, lack of foundation, lack of personal knowledge and relevance. Objection No. 21 is sustained on the grounds of improper opinion and lack of foundation. Objection No. 22 is sustained on the grounds of lack of foundation, lack of personal knowledge, and improper opinion. Objection No. 23 is sustained on the grounds of hearsay, improper opinion, and relevance. Objection No. 24 is sustained on the grounds of improper opinion, lack of foundation, speculation, and relevance. Objection No. 38 is sustained on the ground of lack of foundation and lack of personal knowledge. Objection No. 39 is sustained on the grounds of lack of foundation, improper opinion, and best evidence.

*Klein Reply Declaration, Exhibit A.* Objection No. 42 is sustained pursuant to *Jay v. Mahaffey* (2013) 218 Cal.App.4<sup>th</sup> 1522, 1537 (hereafter *Jay*).

*Hueso Reply Declaration.* Objection No. 43 is sustained as to the new factual contentions that are not supported by the evidence. Objection Nos. 55-62 are sustained pursuant to *Jay*.

*Petitioner's Reply.* Objection No. 44 is overruled. Objection No. 47 was withdrawn by Respondent's counsel. Objection Nos. 45-46, 48-54 are sustained pursuant to *Jay*.

*Petitioner's Evidentiary Objection.* Petitioner's objection to Respondent's request for judicial notice of Exhibit A is overruled.

The Court has discretion to grant or deny a preliminary injunction based on: "(1) the likelihood that the party seeking the injunction will ultimately prevail on the merits, and (2) the balance of harm presented, *i.e.*, the comparative consequences of the issuance and nonissuance of the injunction." (*Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4<sup>th</sup> 837, 856.) The burden is on the party seeking the injunction to show all of the necessary elements. (*Id.*; *O'Connell v. Super. Ct.* (2006) 141 Cal.App.4<sup>th</sup> 1452, 1481.)

*Merits.* A key issue to be decided in this case is whether the amendment of Ordinance 11 is a project under CEQA. Petitioner contends that the mere adoption of regulations constitutes a project under CEQA if an environmental impact may result.

Public Resources Code section 21065 provides that CEQA applies only to "an activity which may cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...." An activity that does not qualify as a project is not subject to CEQA. (CEQA Guidelines, §15060(c)(3); *Chung v. City of Monterey Park* (2012) 210 Cal.App.4<sup>th</sup> 394, 401-402.)

Respondent correctly notes that Petitioner failed to cite any cases wherein a court held that taxicab regulations constitute a project under CEQA. On the other hand, Respondent cited to a PUC Order which found that regulations concerning for hire vehicles do not constitute a project under CEQA. (Respondent's Request for Judicial Notice (RJN), Exh. 5)

In addition, the evidence shows that Respondent was performing an administrative function. Public Resources Code section 120105, which Petitioner relies on to show that Respondent has discretionary power regarding the regulation of taxicabs, in fact only relates to public transport services. Taxicabs are not a form of public transportation. Furthermore, Public Resources Code section 120266 subd. (a)

specifically states that Respondent "may enter into contracts with any city in its area of jurisdiction and with the County of San Diego to license or regulate by ordinance any transportation services rendered wholly within the city's corporate limits or within the unincorporated area." In addition, Government Code section 53075.5 states that cities and counties must set policy with respect to taxicab transportation services rendered within their jurisdiction. Thus, it is the City of San Diego (City) that sets the public policy regarding taxicab regulation through County Policy 500-02, which was incorporated into Ordinance 11. (Klein Dec., Exh. I, Recital E, ¶3.) Notably, none of the prior nine amendments to Ordinance 11 required CEQA analysis. (RJN), Exh. A, p. A-006.) Furthermore, Respondent presented evidence that SANDAG is responsible for long-term transportation system planning in the area. (Pub. Res. Code, §120300(g).)

Finally, Petitioner's only provided speculative and unsupported evidence in support of its contention that the amendment to the ordinance would have negative environmental impacts. On the other hand, Respondent provided evidence that the amendment to Ordinance 11 includes criteria for zero or low emissions. As a result, Petitioner has not shown that amended Ordinance 11 will result in a reasonably foreseeable adverse environmental impact.

*Balance of Harm.* As to Petitioner's contention that its members will suffer economic harm if Respondent is allowed to proceed with the issuance of permits, the Court notes that it has been held that current taxi permit owners do not suffer a regulatory taking when cities grant more people the opportunity to hold taxi permits. (*Luxor Cab Co. v. Cahill* (1971) 21 Cal.App.3d 551, 558; *cf. Cotta v. City & Cnty. of San Francisco* (2007) 157 Cal.App.4th 1550, 1560.) On the other hand, Respondent will be prevented from implementing policy decisions adopted through the democratic process if the injunction is granted. Furthermore, the issuance of an injunction would negatively impact those who have applied for permits by delaying their ability to be issued permits under the amended Ordinance.

Based on the foregoing, the motion is denied.

**IT IS SO ORDERED.**

The Court rules on prospective intervenors' (Intervenors) motion for leave to intervene as follows:

After taking the matter under submission, the Court confirms its tentative ruling.

The Intervenors bring this motion pursuant to Code of Civil Procedure section 387.

Intervenors contend that they may intervene as a matter of right and via permissive intervention.

As to the former, it is allowed where a statutory right to intervene exists or where the party claims an interest in the property or transaction involved in such litigation. (Code Civ. Proc., §387(b).) The test in the latter situation requires that the party claiming a right to intervene show an interest in the "property or transaction" that is the subject of the litigation, that would be substantially prejudiced by any judgment rendered in the party's absence. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶2:409, p. 2-66.) Notably, Petitioner is seeking, among other things, permanent injunctive relief with respect to the implementation of the amended Ordinance. Thus, as persons seeking to obtain permits under the amended Ordinance, their interest in the transaction would be substantially prejudiced by an *adverse* judgment rendered in their absence.

In addition, Respondent San Diego Metropolitan Transit System will not adequately represent the

Intervenors interests since Respondent's interest in representing the general public do not coincide with Intervenors' personal stake in the outcome of this case.

Finally, there is no issue as to timeliness.

As a result, the Court concludes that Intervenors have met the requirements for intervention under section 387 subd. (b).

Even assuming the Court had not found that the Intervenors met the requirements for intervention as of right, the Court would find that the Intervenors motion should be granted on the ground of permissive intervention.

A party seeking permissive intervention is required to show: (1) that the party has a direct and immediate interest in the litigation, (2) that the intervention will not enlarge the issues in the case, and (3) the reasons for intervention outweigh any opposition by existing parties. (*Truck Ins. Exch. v. Super. Ct.* (1997) 60 Cal.App.4<sup>th</sup> 342, 346.)

As to the first element, the party seeking to intervene must show that he will gain or lose by direct operation of the judgment. The moving party need only show a substantial probability that his interest will be affected by the outcome of the litigation. (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 881.) Notably, section 387 is to be construed liberally in favor of intervention. (*Simpson Redwood Co. v. State of Cal.* (1987) 196 Cal.App.3d 1192, 1201.) Here, Intervenors presented evidence that the granting of the relief that Petitioner seeks will directly impair their interest in obtaining taxi permits. (Hamilton Dec., ¶4.)

As to the second element, Intervenors have stated that they are not seeking affirmative relief of their own.

As to the third element, Intervenors have shown that their stake in the outcome of the litigation i.e., their right to obtain permits under the amended Ordinance, outweighs Petitioner's interest in excluding them from participating in this action.

**IT IS SO ORDERED.**

*Ronald S. Prager*

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Judge Ronald S. Prager