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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

CLEAR CHANNEL OUTDOOR, INC., Plaintiff and Appellant, v. BOARD OF APPEALS OF THE CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent; CHEOL HOON LEE et al., Real Parties in Interest and Respondents.	A125636 (City and County of San Francisco Super. Ct. No. CPF-08-508443)

Appellant Clear Channel Outdoor, Inc. (Clear Channel) appeals from a judgment issued by the Superior Court of the City and County of San Francisco dismissing Clear Channel's amended petition for a writ of administrative mandate after the court sustained respondents' demurrers on the ground that Clear Channel lacked standing. Clear Channel sought to vacate a March 2008 decision by the Board of Appeals (Board) for the City and County of San Francisco (City). The Board overturned a permit issued to Clear Channel allowing it to remove a sign structure on real property owned by real parties in interest Cheol Hoon Lee and Bula Lee (Lees), pursuant to which permit, the Board found, Clear Channel had already substantially removed the structure; found that the Lees had the right to reinstall and continue to display general advertising signage on their property; and authorized a revision of the permit to allow the Lees to restore the sign structure, which could be rebuilt on top of remnants left by Clear Channel.

Clear Channel argues it has standing to challenge the Board's decision in its entirety because it has a beneficial interest in the decision on a number of grounds. The Board and the Lees (collectively, respondents) challenge each of Clear Channel's beneficial interest claims, and also argue that we should affirm the court's judgment because Clear Channel's amended petition was time-barred.

We conclude Clear Channel has standing to challenge significant portions of the Board's decision because a number of Clear Channel's beneficial interest claims involve potential "injuries in fact" that fall within the "zone of interests" protected or regulated by the decision. (See *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361 (*Associated Builders*) [California's "beneficial interest" standing requirement is equivalent to the federal "injury in fact" test]; *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1233-1234 (*Waste Management*) [the interest must come within the "zone of interests to be protected or regulated"].) Clear Channel has established a beneficial interest in those portions of the decision that relate to its rights and conduct in managing any signage remnants it left on the Lees' property and signage it owns elsewhere in San Francisco, including the Board's rulings regarding Clear Channel's related permit rights. It does not have a beneficial interest in the Board's rulings that the Lees have the right to reinstall a sign structure and continue to display general advertising signage on their property to the extent these rulings are unrelated to Clear Channel's rights and conduct in managing its own signage. It also does not have a beneficial interest in the entirety of the Board's decision based on its business interests because these are not within the zone of interests implicated by the decision, nor does it have a beneficial interest based solely on its participation as a party in the Board proceedings, or its status as a permit holder, because these do not, by themselves, establish "injuries in fact."

We reject respondents' argument that Clear Channel's amended petition was time-barred. We reverse and remand for further proceedings consistent with this opinion.

BACKGROUND

In our review of the court's order sustaining respondents' demurrers, we consider Clear Channel's petition allegations, and matters which may be judicially noticed. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) Therefore, we focus on these allegations, and those matters for which judicial notice was properly requested below[1] or granted by this court. Our discussion of facts and law in this background section is taken from Clear Channel's amended petition because we are reviewing the lower court's demurrer rulings. Nothing herein should be construed as our agreement with any of Clear Channel's allegations unless so stated.

Clear Channel's Amended Petition Allegations

Local Law Regarding General Advertising Signs

According to Clear Channel, rooftop billboards are considered non-conforming structures under the San Francisco Municipal Code. Generally, existing structures and uses can remain, but cannot be replaced or expanded. Also, San Francisco's Planning Code, as amended by the City's voters in 2002 via Proposition G, designates general advertising signs as non-conforming land uses and structures, and prohibits new general advertising signs. Thus, "non-conforming land uses and structures may not be replaced or rebuilt under most circumstances," and "general advertising signs, once removed may not be replaced or rebuilt." San Francisco's Planning Code section 604, subdivision (h) (section 604, subd. (h)) specifically states:

" 'A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code. . . . A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection,

[1] Each of the parties submitted requests for judicial notice of certain materials to the trial court. The parties do not indicate whether the superior court specifically ruled on their requests for judicial notice, and we have not found such a ruling in the record. We have the authority to take judicial notice of these materials pursuant to Evidence Code section 459.

construction, and/or installation of a general advertising sign at that location to replace the previous existing sign shall be deemed to be a new sign in violation of Section 611 [subdivision] (a) of this Code. . . .' " (§ 604, subd. (h).)

Clear Channel's Removal of its Signs

Clear Channel owned two outdoor general advertising signs on the rooftop of commercial property located at Market and 16th Streets in San Francisco, which space it leased from Cheol Hoon Lee and Bula Lee. The parties' rights and responsibilities were governed by a 1987 lease agreement (lease), which contained two particularly relevant provisions. The first, as alleged in Clear Channel's petition, gave Clear Channel the right to remove its signs at any time, stating, " '[A]ll signs, structures and improvements placed on the premises by or for the Lessee [Clear Channel] shall remain the property of the Lessee, and . . . Lessee shall have the right to remove the same at any time during the term of the Lease or after the expiration of the Lease.' "

The second lease provision, as alleged, gave Clear Channel the right to "apply for and control all governmental permits for the [s]igns." It stated, " '[T]he Lessee shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of Lessee's [Clear Channel's] signs, at the sole discretion of the Lessee. All such permits shall always remain the property of Lessee.' "

In 2006, the Lees notified Clear Channel that they would not renew the lease, set to expire on May 14, 2007, and would charge a holdover rent of $150,000 per week if Clear Channel did not terminate its occupancy. In response, Clear Channel applied to the City's Planning Department and the Department of Building Inspection "for a removal permit in order to exercise its option to remove its [s]igns." The departments approved this application on May 9, 2007, and issued a removal permit to Clear Channel.

The Lees' Appeal to the Board

After Clear Channel removed the signs, the Lees appealed to the Board.[2] They argued Clear Channel was not authorized to apply for the removal permit, and asked the Board to change it to a building permit that would allow the Lees to build new rooftop billboards on their property, notwithstanding, Clear Channel alleged, "the Planning Code's prohibition against building new signs to replace signs that have been removed by their owner."

At its October 2007 hearing, the Board declined to consider the lease's terms. It found Clear Channel did not have the authority to apply for a removal permit and had submitted a defective application, and decided to revoke the permit as issued to Clear Channel. The Board also discussed how it could order the City to allow the Lees to erect new rooftop signs on their property, despite the views of representatives from the city attorney's office and the Planning Department that local law prevented the City from doing so.

In March 2008, the Board denied a rehearing request by Clear Channel. It granted the Lees' appeal and adopted 27 findings of fact and conclusions of law in support of its written decision (decision), which contained three parts. First, the Board overturned the permit as issued to Clear Channel by the Department of Building Inspection; second, it found that the Lees had the right to reinstall and to display general advertising signage on their property; and third, it authorized revision of the removal permit previously issued to Clear Channel so as to allow the Lees to restore the sign structure on their roof.[3]

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[2] Clear Channel alleges that respondent and real party in interest Tony Lee, the Lees' son, and Cheol Hoon Lee were the actual parties to the appeal.

[3] Respondents requested below that the court take judicial notice of the decision in support of their demurrers pursuant to Evidence Code section 452, subdivision (c) and related case law. We have found no indication that the court ruled on this request. All of the parties discuss the decision in their appellate papers. We construe their references as requests that we take judicial notice of the decision, and do so pursuant to Evidence Code section 459.

Clear Channel sought a writ from the superior court pursuant to Code of Civil Procedure section 1094.5 directing the Board to set aside and vacate its decision and findings in their entirety, restore Clear Channel's permit, revoke any related permits issued to the Lees, and reverse any action taken by the Lees based on permits issued to them. According to Clear Channel, the Board's decision was invalid for numerous reasons, including that the Board did not give Clear Channel a fair hearing by refusing to consider the terms of the lease, committed numerous prejudicial abuses of discretion, acted outside of its jurisdiction, adopted findings unsupported by the evidence, and issued a decision unsupported by the findings. Clear Channel alleged it had standing because it had a beneficial interest in the Board's decision over and above the general public interest on numerous grounds.

Respondents' Demurrers

In January 2009, the court granted the Board's demurrer to Clear Channel's original petition, with leave to amend, because Clear Channel failed to allege a sufficient beneficial interest in the Board's findings and decision. The court found that Clear Channel's "interest consisted of having a permit to remove the signs; once removed [Clear Channel] had no further interest. Competition with the Lee's [*sic*] is not a sufficient interest."

Clear Channel filed an amended petition, to which respondents demurred. Each argued Clear Channel lacked the requisite beneficial interest to establish standing. Clear Channel argued it had a sufficient beneficial interest for a variety of reasons, including because it was a permit holder challenging an order revoking and revising its permit, an active participant in the subject administrative hearings, and a party whose interests were inextricably connected to the Board's interpretation of section 604, subdivision (h).

The superior court sustained both demurrers without leave to amend, stating in its written order simply that "petitioner has no standing," and entered judgment in favor of respondents. Clear Channel filed a timely notice of appeal from the court's order and judgment.

DISCUSSION

I. *Our Review of Demurrers*

We conduct a de novo review of a trial court's order sustaining a demurrer. (*Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631.) We treat demurrers " ' "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." ' " (*Zelig v. County of Los Angeles*, *supra*, 27 Cal.4th at p. 1126.) As we have already indicated, we also consider matters which may be judicially noticed. (*Ibid*.) We give the amended petition " 'a reasonable interpretation, reading it as a whole and its parts in their context,' " to determine whether it states facts sufficient to constitute a cause of action." (*Ibid*.) We reverse the trial court "if the plaintiff has stated a cause of action under any possible legal theory." (*Mendoza v. Town of Ross*, *supra*, at p. 631.) Conversely, "unless failure to grant leave to amend was an abuse of discretion, the appellate court must affirm the judgment if it is correct on any theory." (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) The appellant bears the burden of demonstrating error. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.)

II. *Clear Channel's Standing Arguments*

Clear Channel argues we must reverse the trial court judgment because Clear Channel has standing to challenge the Board's decision in its entirety. Clear Channel argues it has standing based on its legal right to participate in the Board proceedings; because it was the permit applicant and holder of a permit revoked by the Board; because "important rights remain at stake in possession of the permit and the Board's erroneous findings continue to affect Clear Channel's rights and conduct," based both on Clear Channel's interests in managing its signage and its business interests; and because the Board's decision establishes administrative precedent.

Respondents dispute each of Clear Channel's arguments. They argue that Clear Channel's legal right to participate, and its status, in the Board's proceedings are by themselves not sufficient to establish standing; Clear Channel does not have a beneficial interest regarding its permit or signage because its removal of its sign structure on the Lees' property rendered moot any concerns it might have about the Board's decision; and

Clear Channel's business interests fall outside the zone of interests to be protected or regulated by the duty asserted by the Board.

We conclude that Clear Channel has standing to challenge significant portions of the Board's decision. Specifically, it has standing to challenge the Board's rulings regarding the remnants of sign structure the Board found Clear Channel left on the Lees' property and, if these remnants in fact remain, to challenge the Board's overturning of Clear Channel's permit. It also has standing to challenge the Board's rulings in support of overturning its permit because these rulings potentially affect Clear Channel's ability to manage signage it owns elsewhere in San Francisco.

Clear Channel does not have a beneficial interest in the Board's rulings that the Lees have the right to reinstall a sign structure and continue to display general advertising signage on their property to the extent that these rulings do not affect Clear Channel's management of any remnants it left on the Lees' property. Clear Channel also has not established standing to challenge the entirety of the Board's decision based on its business interests, or based solely on its participation or status in the Board's proceedings, because these do not involve "injuries in fact" within the "zone of interests" protected or regulated by the decision. (See *Associated Builders, supra,* 21 Cal.4th at p. 361; *Waste Management, supra*, 79 Cal.App.4th at p. 1233.)

A. *The Board's Decision*

The Board overturned the permit as issued to Clear Channel, confirmed the Lees' right to reinstall and display general advertising signage on their property, and authorized the revision of the permit previously issued to Clear Channel "to allow reconstruction of general advertising signage at the [p]roperty in the same size and location as previously existed. It made numerous findings in support of its decision, including the following:

General advertising signs had been located at the Lees' property for nearly 70 years. When the permit was issued to Clear Channel, general advertising on the property was a lawful, non-conforming use and the signage was a lawful, non-complying structure pursuant to San Francisco Planning Code section 611, subdivision (a).

The Clear Channel agent who applied for the permit to remove the sign structure did not properly complete certain portions of the permit application, which omissions were overlooked by the City.

The Lees neither authorized the permit application, nor agreed to "voluntarily" surrender their rights to display signage on their property. They intended that Clear Channel remove its signage so they could lease the space to a different tenant, and did not intend to "voluntarily" forfeit their right to the future use of the rooftop for general advertising.

Clear Channel "substantially" removed the signage at the property during the 15-day period to appeal the issuance of the permit to the Board.

The Board determined that in a previous case, also involving Clear Channel (*Clear Channel Outdoor v. Dept. of Building Inspection* (*Pocoroba*) (Oct. 8, 2003, No. 03-036) [nonpub. opn.]), "the right to display general advertising signs on a property belongs to the property owner, that the removal of a legal non-complying general advertising sign structure without the consent of a property owner does not constitute removal or destruction of the non-conforming use, and that the restoration of a general advertising sign structure removed without the consent of a property owner would not constitute a new general advertising sign" under San Francisco Planning Code section 611, subdivision (a).

The Board recounted that after *Pocoroba*, an ordinance was passed amending certain provisions in section 604, subdivision (h). The City Attorney concluded in a 2007 opinion that the plain language of the amended ordinance "vested the right to maintain a nonconforming use in the tenant sign company and not the property owner," and the Planning Department agreed. Nonetheless, the Board concluded that "the right to continue to display general advertising on a property as a legal, non-conforming use belongs to [the Lees] and is not subject to forfeiture by termination of a tenant's lease and a tenant's unilateral removal of tenant improvements." Therefore, the Lees did not forfeit their rights to continue to display general advertising on their property.

The Board also concluded, as an "independent basis" for its decision,[4] that section 106.3.1.6 of the San Francisco Building Code requires building permits to be issued only to an owner of the real property to which the permit pertains, or the owner's authorized agent. The Board, noting Clear Channel's contention that its lease with the Lees gave it the right to seek the permit unilaterally, "decline[d] to interpret the private contract." Because the Lees did not authorize the permit, it "was issued to a party that did not demonstrate apparent authority to obtain it," and the permit did not forfeit the Lees' rights to a non-complying structure or non-conforming use.

The Board also found, as another "independent" basis for its decision, that the "sign structure . . . was not 'destroyed or removed' within the meaning of [section 604, subdivision (h)]." It based this finding on evidence that "Clear Channel 'sealed off remnants of the wood affixed to the roof' that had been part of its sign structure and did not remove these portions of the sign structure. Because these portions of the sign structure remain, [the Lees] may revise the [permit] to accomplish alterations required to replace the signboard . . . ."

The Board decided, as another purported "independent basis" for its decision, to exercise its discretionary authority pursuant to Business and Tax Regulation Code, article 1, section 26. It found, based on testimony of property owners, "a pattern of heavy-handed business practices by general advertising sign companies in lease renewal negotiations that is not in the best interests of the City's business community or residents," and "decline[d] to approve a building permit that would encourage and reward such practices."

The Board also found that the Lees did not voluntarily remove the signage on their property because they did not authorize Clear Channel's removal of it. The removal was

[4] The Board claimed that a number of its findings were each an "independent basis" for its decision, without further explanation. We have carefully reviewed the Board's decision, and conclude that no one finding supports all three parts of its decision, and that at least some aspects of the Board's decision necessarily implicate beneficial interests of Clear Channel, as we discuss herein.

"akin to a 'calamity' under Planning Code section 188[, subdivision] (b)," and did not forfeit the Lees' rights to continue the non-conforming use and maintain the non-complying structure, allowing for restoration of the signage without conflicting with section 604, subdivision (h).

B. *The Beneficial Interest Requirement*

Clear Channel filed its amended petition pursuant to Code of Civil Procedure section 1094.5, which authorizes writs of mandate for administrative orders that may issue only if the petitioner is a "party beneficially interested." (Code Civ. Proc., § 1086.) This "has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796 (*Carsten*), followed in *Associated Builders, supra,* 21 Cal.4th at p. 361.)

The petitioner must have a sufficient interest to vigorously press its position in an actual controversy with the respondent. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439.) Relief is unavailable where the plaintiff fails to show the writ will subserve or protect plaintiff's rights or interests, or where it is apparent plaintiff has no direct interest in the governmental action, and would not accrue any benefit from the writ. (*J & K Painting Co. v. Bradshaw* (1996) 45 Cal.App.4th 1394, 1399.) Lack of standing is a jurisdictional defect that mandates dismissal. (*Common Cause*, at p. 438.) If a writ petition indicates the petitioner lacks standing to obtain relief, the petition is vulnerable to a general demurrer on the ground that it fails to state a cause of action. (*Carsten, supra,* 27 Cal.3d at p. 796.)

Our Supreme Court has held that the "beneficial interest" standard "is equivalent to the federal 'injury in fact' test, which requires a party to prove by a preponderance of the evidence that it has suffered 'an invasion of a legally protected interest that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." ' " (*Associated Builders, supra,* 21 Cal.4th at pp. 361-362.) The Third District has held that implicit in our standing rules is the requirement that, like the federal

rules, the interest asserted must be within the "zone of interests to be protected or regulated by the legal duty asserted" (*Waste Management, supra*, 79 Cal.App.4th at pp. 1233-1234), meaning "the plaintiff's interest in the legal duty asserted must be direct rather than indirect or attenuated." (*Id.* at p. 1234.)

Clear Channel seems to suggest in its reply brief that this summary statement in *Waste Management* is a lower "zone of interests" standard than the federal standard. We disagree. Our courts' views of the standards are the same. As the *Waste Management* court states in introducing this summary statement, "the federal law of standing is persuasive . . . [and] aptly states a qualification that is implicit in our rules of standing." (*Waste Management, supra*, 79 Cal.App.4th at p. 1234.)

This "zone of interests" test has been applied by other appellate courts, including in this district. (See *Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1107 [Division Five of this District]), *Regency Outdoor Advertising, Inc. v. City of West Hollywood* (2007) 153 Cal.App.4th 825, 829-830 (*Regency*) [Second District]; and *Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133, 1136-1140 [Fourth District].) In other words, as Division Five of this District has stated, "[t]o demonstrate a beneficial interest sufficient to pursue a mandamus action, a party must show a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted." (*Lindelli,* at p. 1107, citing *Parker v. Bowron* (1953) 40 Cal.2d 344, 351 [" 'a writ of mandate . . . will be granted only when necessary to protect a substantial right and only when it is shown that some substantial damage will be suffered by the petitioner if said writ is denied' "] and *Waste Management, supra*, 79 Cal.App.4th at pp. 1233-1234.)

Therefore, we must determine whether Clear Channel has a direct and substantial interest in the Board's decision, i.e., an injury in fact, that falls within the zone of interests regulated or protected by the decision.

C. *Clear Channel's Standing Based on Its Interest in Managing Its Signage*

Clear Channel's rights and conduct regarding its management of its signage are directly affected by significant portions of the Board's decision, such as the Board's

finding that it left behind remnants of its signage on the Lee's property. To the extent these remnants in fact remain and Clear Channel seeks to remove them, its rights to do so are directly affected by the Board's overturning of the permit as issued to Clear Channel. The Board's rulings supporting the overturning of the permit also potentially directly impact Clear Channel's ability to manage the signage it alleges to own elsewhere in San Francisco pursuant to other leases. All of these matters are within the zone of interests protected and regulated by the decision. Therefore, Clear Channel has standing to challenge these portions of the Board's decision.

In its amended petition, Clear Channel alleged standing because, among other things, as owner and operator of the signage, it was directly and prejudicially injured by the Board's decision. It alleged that it removed its signage before the Board revoked its permit, and that the Board abused its discretion in finding that the signage had not been "destroyed or removed" under the terms of section 604, subdivision (h) because Clear Channel left behind sealed remnants of the signage, upon which the Lees could replace the signboard. Clear Channel contends on appeal that, because it owns all of the signage, including the remnants, under the lease, it is open to possible liability by third parties if the signage constructed over these remnants causes injury to anyone in the future. Therefore, it "still has beneficial interest in maintaining the permit to remove the sign." It also contends that the Board's decision regarding its right to the permit to remove the remnants of its signage potentially affects its rights and conduct regarding signage it owns throughout San Francisco. We agree that Clear Channel has standing to challenge these portions of the Board's decision.

Our task in determining standing is not to decide the merits of the parties' arguments, such as whether or not signage remnants remain on the property, or whether or not the Board should have considered the terms of the lease. At the demurrer stage, we determine only whether Clear Channel's allegations and arguments establish the requisite beneficial interest, i.e., "a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted." (*Lindelli v. Town of San Anselmo, supra,* 111 Cal.App.4th at p. 1107.)

The Board's decision to overturn Clear Channel's permit was based on its findings about Clear Channel's rights and conduct, and its decision to authorize revision of the permit to allow the Lees to reconstruct signage appears to be based on its finding that Clear Channel left remnants of signage (which revision it refers to only in regard to these remnants). This includes the Board's finding that, because Clear Channel left these remnants behind, the sign structure was not "destroyed or removed" as that phrase is used in section 604, subdivision (h). Clear Channel has the requisite beneficial interest in these portions of the Board's decision because they directly relate to Clear Channel's management of its purported property, the signage remnants. These rights are not moot in light of the disputed continued existence of these remnants.

Furthermore, Clear Channel's rights and conduct in managing its signage are plainly within the "zone of interests" protected and regulated by the City's signage ordinances, contained in article 6 of its Planning Code, including section 604, subdivision (h). Planning Code section 601 states the purposes of these ordinances:

"This Article 6 is adopted in recognition of the important function of signs and of the need for their regulation under the Comprehensive Zoning Ordinance of the City and County. In addition to those purposes of the City Planning Code stated in Section 101, it is the further purpose of this article 6 to safeguard and enhance property values in residential, commercial and industrial areas; to protect public investment in and the character and dignity of public buildings, open spaces and thoroughfares; to protect the distinctive appearance of San Francisco which is produced by its unique geography, topography, street patterns, skyline and architectural features; to provide an environment which will promote the development of business in the City*;* to encourage sound practices and lessen the objectionable effects of competition in respect to size and placement of signs; to aid in the attraction of tourists and other visitors who are so important to the economy of the City and County; to reduce hazards to motorists and pedestrians traveling on the public way; and thereby to promote the public health, safety and welfare." (S.F. Planning Code, § 601.)

Given section 601's emphasis on the regulation of signage, there is no question that Clear Channel's ability to manage its signage comes within the zone of interests protected or regulated by the Board's decision.

Clear Channel's rights and conduct in managing signage it alleges to own elsewhere in San Francisco are also directly and substantially affected by the Board's rulings overturning Clear Channel's permit. A company has a beneficial interest in an administrative decision if its business operations are inextricably intertwined into the operation of an ordinance, as interpreted by an administrative decision, and within the zone of interests protected or regulated. Thus, in *Gowens v. City of Bakersfield* (1960) 179 Cal.App.2d 282 (*Gowens*), the City of Bakersfield passed an ordinance requiring hotel owners to impose a tax on "transient" guests. (*Id.* at p. 283.) A hotel owner sued for a judgment that the ordinance was unconstitutional and for injunctive relief against its enforcement, contending that the City of Bakersfield was threatening to enforce this ordinance against him and other hotel owners. (*Ibid.*) The trial court sustained defendants' demurrer to this complaint and dismissed the action, and the hotel owner appealed. (*Id.* at p. 282.)

Defendants argued that the hotel owner did not have standing because he was not the person taxed (that was the transient), and therefore suffered no legal injury. (*Gowens, supra,* 179 Cal.App.2d at p. 283.) The appellate court rejected this argument. Instead, it found that the hotel owner was "vitally interested in the validity of the ordinance." (*Id.* at p. 285.) The hotel owner, along with his business interests,[5] had an interest in the decision because his "business operations are inextricably interwoven into the operation of the ordinance. Under threat of criminal and civil penalties, he is required to inform his prospective customers of the basis upon which the tax is levied and to collect, record, report and pay the tax to the tax collector. We are satisfied he has a sufficient interest to

[5] Clear Channel actually cites these cases in support of its argument that it has standing because the Board's decision affects its business interests, an argument with which we do not agree.

maintain the type of action here involved." (*Id*. at p. 286) The court reversed the trial court's judgment. (*Ibid*.)

Similarly, in *Andal v. City of Stockton* (2006) 137 Cal.App.4th 86, the plaintiffs, which included three cell phone companies, alleged in a declaratory relief action that a local government fee imposed by the City of Stockton for the city's 911 communication system was unconstitutional because it had not been submitted for voter approval. (*Id*. at p. 88.) The City of Stockton won dismissal of the action by demurrer for failure to exhaust administrative remedies. (*Id*. at pp. 89-90.) The appellate court found this was not a bar (*id*. at pp. 91-92), and addressed plaintiffs' argument that the cell phone companies lacked standing because they were not directly affected by the law. (*Id*. a pp. 90, 94.) The court rejected the argument, finding that the cell phone companies' business operations were inextricably intertwined into the operation of the ordinance, relying on *Gowens*, and reversed the trial court's judgment (*Id*. at pp. 94-95; see also *Atlas Hotels, Inc. v. Acker* (1964) 230 Cal.App.2d 658, 660 [following *Gowens* to note that mandamus is a proper remedy in a case involving a challenge by hotel owners to a tax on transient hotel room occupants].)

These cases indicate Clear Channel has a beneficial interest in the Board's rulings in support of overturning the permit based on Clear Channel's management of signage elsewhere in San Francisco, even though the Board's decision was regarding the Lees' property alone. The Board overturned Clear Channel's permit for two independent reasons. First, it interpreted the City's permit procedures so as to require lessees who purportedly own signage on a lessor's property to obtain the lessor's approval to any permit application to remove signage. Second, it overturned the permit under its discretionary authority because it found general advertising sign companies had engaged in heavy handed business practices in lease negotiations. Clear Channel's rights and conduct in managing signage it alleges to own elsewhere, e.g., its ability to obtain permits to remove signage, is inextricably interwoven into each of these rulings. These interests are within the zone of interests protected and regulated by the decision, as indicated by the statement of purpose contained in San Francisco Planning Code section 601.

Therefore, Clear Channel has a beneficial interest in these portions of the Board's decision.

Respondents' arguments that Clear Channel does not have a beneficial interest in the Board's decision based on Clear Channel's rights and conduct in managing its signage are unpersuasive. The Board argues that nothing in the Board's decision affected Clear Channel's rights under its permit and, therefore, such rights and conducts are not a basis for standing. This is incorrect in light of the Board's finding that Clear Channel left remnants of signage remaining on the Lees' property, and because the Board's determinations in overturning Clear Channel's permit could affect Clear Channel's rights and conduct in managing signage elsewhere.

The Board also contends that Clear Channel has "made clear that its real motive is to safeguard its economic leverage vis-à-vis other landlords and other advertising companies in San Francisco." We agree that Clear Channel's business interests are not a basis for standing, as we discuss further below. However, Clear Channel's "real motive" is not relevant in our review of whether or not it holds a sufficient beneficial interest in the Board's decision. Our review is limited to whether Clear Channel makes allegations which establish a beneficial interest, whether or not it is "really" interested in what it asserts.

The Board further argues that Clear Channel cannot maintain standing because the Board asserted as an "independent ground" for its decision its exercise of its equitable authority pursuant to San Francisco Business and Tax Regulation Code section 26 (section 26). The Board notes, "it is well established that section 26 administrative discretion is not cabined by specific criteria that may be set forth in city codes or ordinances. Instead, the discretion is informed by the public interest, encompassing anything impacting the public health, safety or general welfare." (*Martin v. City and County of San Francisco* (2005) 135 Cal.App.4th 392, 407, fn. omitted.) Section 26 does not obligate the City to exercise its discretion in the same fashion with regard to all permit applications. (*Martin,* at p. 407, fn. 8.) Therefore, argues the Board, its

determinations about Clear Channel's permit do not have any relevance to Clear Channel's signage elsewhere.

This argument is not persuasive. The Board has broad discretion to act under section 26, but its exercise of such authority is not unreviewable. It exercised this authority specifically to "decline to approve a building permit that would encourage and reward" what the Board found was "a pattern of heavy-handed business practices by general advertising sign companies in lease renewal negotiations that is not in the best interests of the City's business community or residents." The Board obviously considered Clear Channel's lease negotiation practices with the Lees to be so unacceptable as to justify overturning its permit. The ruling potentially affects Clear Channel's ability to remove any remnants of signage that might remain on the property, and could impact Clear Channel's removal of other signage in the City, thereby giving Clear Channel a beneficial interest in the decision, as we have discussed.

The Board also argues that Clear Channel has conceded that the removal of the signage remnants is an "insignificant right," based on Clear Channel's voluntary dismissal of its federal action. This is utterly unpersuasive. Nothing in the dismissal contains such a concession.

Finally, the Board argues that Clear Channel's challenge of the Board's decision based on signs it alleges to own elsewhere in the City amounts to a request for an advisory opinion. It contends *Gowens*, *supra*, 179 Cal.App.2d 282, does not apply here because the hotel owner was required to apply the tax under threat of criminal penalties, while Clear Channel is not compelled to do anything. We disagree. At a minimum, the Board's decision indicates that Clear Channel cannot remove any signage it has placed on San Francisco real property pursuant to leases with property owners without obtaining the property owners' consent to its permit application. The Board's decision, therefore,

potentially has a direct and substantial impact on Clear Channel's ability to manage its signage.[6]

The Lees make three arguments why Clear Channel lacks standing to challenge the overturning of its permit. First, the Lees contend that "it is undisputed that Clear Channel removed its property from the Lees' building long before the Board revised the permit to allow the Lees to erect their own signs." This too ignores the Board's finding that Clear Channel left remnants of signage on the Lees' property.

Second, the Lees argue that Clear Channel's concern that it will be liable to anyone who suffers an injury in the future from the signage lacks merit because the lease does not contain a provision providing for continuing liability. This, however, is a lease issue that is not before us.[7]

Third, the Lees argue that "[s]ince the existence of Clear Channel's supposed 'beneficial interest' in 'fully remov[ing] the sign' derives solely from the factual finding it disputes and seeks to have overturned in through mandamus, the 'beneficial interest' will evaporate should Clear Channel be successful; the very 'interest' sought to be protected by the writ will disappear upon its issuance." We fail to see why this should act to bar Clear Channel from obtaining a writ that vacates what it considers to be an erroneous Board finding.

Although Clear Channel has standing to challenge the Board's interpretation of the phrase "destroyed or removed" as used in section 604, subdivision (h) because it relates directly to Clear Channel's management of any remaining signage remnants on the Lees' property, Clear Channel does not have standing to challenge the Board's determination that the "owner" of signage rights under section 604, subdivision (h) is the property owner, not the signage company. Clear Channel argues it has standing because the

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[6] The focus of the Board's argument actually is regarding Clear Channel's lack of a beneficial interest in the Board's enforcement of section 604, subdivision (h).

[7] The Lees also argue that Clear Channel's claim of potential liability is not relevant to signage owned elsewhere by Clear Channel. We agree with the Lees on this issue.

Board's determination affects its rights "to exclusive maintenance and removal of signs under hundreds of other leases throughout the City." We disagree with this argument, which is based on Clear Channel's business interests. The Board's interpretation of section 604, subdivision (h), as stated, relates only to whether or not the Lees forfeited their rights to reinstall a sign structure and display general advertising signage on their property. The Board concluded, based on *Pocoroba*, that under section 604, subdivision (h) "the right to continue to display general advertising on a property as a legal, non-conforming use belongs to the [Lees] and is not subject to forfeiture by termination of a tenant's lease and a tenant's unilateral removal of tenant improvements." This conclusion as stated relates only to the Lees' rights, and not to Clear Channel's. Therefore, Clear Channel has no basis to challenge it.

This portion of the Board's decision only establishes the Lees' rights generally to reinstall a sign structure and continue to display general advertising. It does not address the Board's overturning of the permit as to Clear Channel, its authorization of a revision of that particular permit to allow the Lees to restore the sign structure on top of existing signage remnants, or Clear Channel's rights regarding any remaining signage remnants. Therefore, although Clear Channel does not have standing to challenge this portion of the Board's decision, it is not a basis for affirming the trial court's sustaining of respondents' demurrers. The Board's finding that the Lees did not "voluntarily" remove the general advertising from their property, making the removal "akin to a 'calamity' under Planning Code Section 188[, subdivision] (b)," is similarly limited in its scope.

D. ***Clear Channel's Business Interests***

Clear Channel also argues that it has standing because the Board's decision has a direct impact on its business interests. We reject this argument because these interests are not within the "zone of interests" to be protected or regulated by the Board's decision.

Clear Channel alleged in its amended petition that its "very ability to conduct its business in San Francisco" was directly damaged because the Board's decision set a precedent that undermines Clear Channel's rights to ownership of nearly 350 signs in the City, "many of which are governed by leases between the landowner and Clear Channel

with provisions nearly identical to those in the lease." Clear Channel contends that in its lease with the Lees and other landlords in the City, it has bargained for the exclusive right to have a sign on the property and to apply for and hold all permits in connection with these signs. It claims that under the circumstances, including the limitations on new signage in section 604, subdivision (h), it has a substantial business interest in the "continuing value" of permits related to its signage throughout the City.

Specifically, Clear Channel argues that "[a]t its core, the controversy between the parties is not about one set of signs or the other, it is about ownership of *a permit* to build, maintain or remove advertising signs in a city that has placed severe constraints on the construction of new signs. Clear Channel held such a permit for the signs on Landlords' property before the Board's decision. After the Board's decision, Clear Channel no longer holds that permit—Landlords do. Landlords' extensive participation in this case speaks volumes about the value inherent in such a permit, and about the interests at stake in the Board's decision."

Clear Channel further argues that it will lose its "bargained-for right under the lease to be the lawful holder of any right to maintain an advertising sign on the Lees' property. As with any land use permit, the value rests with the right to conduct the use as much as with the physical representation of the use itself. The dispute in this case centers on the right, or permit, to conduct general advertising at a particular location. The right holds a value separate and apart from the physical advertising signs. Clear Channel obtained the right to maintain general advertising signs on the Lee property through a lease and a permit from the City of San Francisco. Since San Francisco has made new billboards unlawful, the rights to existing signs are even more valuable, because once a sign is removed, it cannot be replaced. The lease agreement between the Lees and Clear Channel provides that Clear Channel not only has the right to maintain general advertising signs on the property but also has the right to remove the signs any time before or after termination of the lease." According to Clear Channel, the Board's findings, particularly that under section 604, subdivision (h), the property owner, not the signage tenant, is the "owner" of the rights to non-complying signage, also "do concrete

and particularized harm" to Clear Channel's business interests by, among other things, "eliminating the valuable right to control all permits that Clear Channel has negotiated for in its many other leases throughout the City."

Clear Channel must demonstrate that its business interests come within the "zone of interests to be protected or regulated by the legal duty asserted" by the Board. (*Waste Management, supra,* 79 Cal.App.4th at pp. 1233-1234.) It argues that the purpose the City's signage ordinances extends to its business interests, based on its interpretation of one of the stated purposes in San Francisco Planning Code section 601. Clear Channel contends that the phrase, "it is the . . . purpose of this Article 6 . . . to provide an environment which will promote the development of business in the City" (S.F. Planning Code, § 601), extends protection to San Francisco's *business* environment generally, and, therefore, extends to Clear Channel's business interests in such things as the value of the permits it has purportedly bargained for in leases throughout the City. The Lees argue that this phrase does not establish the signage ordinances protect or regulate Clear Channel's business interests because it refers to the City's *physical* environment only. The Board argues that article 6 was "enacted to reduce and control the blight caused by business and general advertising signs. [Citation.] Nothing in the text of Article 6 supports Clear Channel's contention that it was intended to protect the financial or competitive interests [of] advertisers in San Francisco."

We agree with respondents. As we have already discussed, San Francisco Planning Code section 601 indicates the signage ordinances are intended to regulate signage in San Francisco. Its emphasis is on the signage itself. The use of the term "promote" in the phrase highlighted by Clear Channel indicates that the "environment," physical or otherwise, relates specifically to the regulation of promotional signage that helps develop business in the City, and not to business interests such as those of Clear Channel. Therefore, Clear Channel fails to establish that its business interests are within the zone of interests involved here.

Our conclusion is consistent with those reached by other courts evaluating similar "business interest" arguments. In *Driving Sch. Assn. of Cal. v. San Mateo Union High*

Sch. Dist. (1992) 11 Cal.App.4th 1513, Division One of this District held that a private association of driving schools that challenged a school district's charging high school students for driver training classes did not have a beneficial interest in the outcome of the relevant administrative proceeding because its only interest was in reducing competition, and was "not actually aggrieved by the fact that fees are charged." (*Id.* at p. 1517.) Similar economic competition arguments were rejected as outside the purposes of CEQA in *Waste Management*, *supra*, 79 Cal.App.4th at page 1235, and *Regency*, *supra*, 153 Cal.App.4th at pages 829-830. In short, Clear Channel's business interests are not a basis for standing.

E. ***Clear Channel's Participation and Status in the Board's Proceedings***

Clear Channel also argues that its legal right to participate in the Board proceedings, and its status as a party in those proceedings and a permit holder, each is *alone* enough to establish standing to challenge the Board's decision in its entirety. It relies on language in a number of cases suggesting that petitioners who participate, as parties, permit holders, or otherwise, in administrative proceedings have a sufficient beneficial interest to establish standing. However, as indicated by the "injury in fact" and "zone of interests" standards, more is needed. (See *Associated Builders*, *supra*, 21 Cal.4th at p. 361; *Waste Management*, *supra*, 79 Cal.App.4th at p. 1233.)

As respondents point out, "a writ will not issue to enforce a technical, abstract or moot right." (*Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87.) This Division has emphasized petitioners' actual interests over their status in administrative proceedings when reviewing standing issues. We have stated, "it is not necessary that someone who petitions for a writ of mandate be a party to the action below," but that the person "must demonstrate that he is beneficially interested in the outcome of the proceeding." (*Brotherhood of Teamsters & Auto Truck Drivers v. Unemployment Ins. Appeals Bd.* (1987) 190 Cal.App.3d 1515, 1521.)

The Supreme Court has specifically rejected a form of the "participation" argument. In *Carsten*, *supra*, 27 Cal.3d 793, the court considered whether a member of an administrative board could seek a writ to challenge the legality of an action taken by

that board. (*Id*. at p. 795.) The board member/petitioner challenged the board's decision to replace a board-written examination with an objective national examination for psychology license applicants. (*Id*. at pp. 795-796.) The court concluded that, since the petitioner was "neither seeking a psychology license, nor in danger of losing any license she possesses under the rule adopted by the board, she is not a beneficially interested person within the meaning of Code of Civil Procedure section 1086." (*Id*. at p. 797.) It concluded that standing is established for " '[o]ne who is in fact adversely affected by governmental action' " that is judicially reviewable. (*Carsten*, at pp. 796-797, quoting Davis, 3 Administrative Law Treatise (1958) p. 291.)[8]

Clear Channel's participation and status arguments are based on language in opinions, most of them at least several decades old, which suggests mere participation or party/permit holder status is sufficient to establish standing. However, when viewed in light of the circumstances involved in each case, it is apparent that significant, ongoing beneficial interests also were typically involved.

Clear Channel points out that our Supreme Court has stated "that elemental principles of justice require that parties to the administrative proceeding be permitted to retain their status as such throughout the final judicial review by a court of law, for the fundamental issues in litigation remain essentially the same." (*Bodinson Mfg. Co. v. California Employment Com.* (1941) 17 Cal.2d 321, 330 (*Bodinson*), followed in *Temescal Water Co. v. Dept. Public Works* (1955) 44 Cal.2d 90, 107 [if respondents "show their participation as interested parties in that proceeding, they may establish as well their interest in a judicial proceeding to review the department's determination"].)

Furthermore, based on *Bodinson* and other cases, one appellate court has stated that "[i]t is settled law in California that if a person is permitted by statute to appear and

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[8] Similarly, our Supreme Court has held that a petitioner does not establish standing by merely showing it has the right to sue from an administrative decision. (*People Ex Rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal.4th 971, 988 [the Director of the California Department of Conservation, although ultimately found to have standing, did not have standing based solely on a statutory authorization to sue].)

take part in an administrative hearing, he is sufficiently beneficially interested to seek a writ of mandate to review the administrative decision or disposition." (*Memorial Hosp. of Southern Cal. v. State Health Planning Council* (1972) 28 Cal.App.3d 167, 178 (*Memorial Hospital*); see also *Covert v. State Board of Equalization* (1946) 29 Cal.2d 125, 130 [the right to complain to the State Board of Equalization about a licensee "would be of little value if the complainant could not compel the board to perform its duties"].)

However, most of the cases cited by Clear Channel involve petitioners with direct and substantial ongoing interests in the subject matter of the administrative proceedings as well. In *Bodinson*, the statute at issue specifically granted standing to an " 'employer whose reserve account may be affected by the payment of benefits to any individual formerly in his employ.' " (*Bodinson, supra*, 17 Cal.2d at p. 330.) The court concluded that the petitioner met these criteria. (*Ibid.*) Clear Channel cites other cases where the petitioners held similarly direct and substantial ongoing interests, although they were not extensively discussed. (See *Tieberg v. Superior Court* (1966) 243 Cal.App.2d 277, 283 [statute specifically granted department director standing, he was party to the administrative proceeding, and the decision to be reviewed directly affected his administration of the fund at issue]; *Temescal Water Co. v. Dept. of Public Works*, *supra*, 44 Cal.2d at pp. 93-94 & fn. 1 [petitioners have standing to challenge the issuance of the permit which would have deprived them access to water]; *Bakkebo v. Municipal Court* (1981) 124 Cal.App.3d 229, 233-234 [sureties subject to enforcement of amended judgment against them had standing to seek relief from entry of judgment].)

Clear Channel also cites to *Beverly Hills Fed. S & L Assn. v. Superior Court*, (1968) 259 Cal.App.2d 306, in which the court stated, "the requisite standing to maintain an action for administrative mandamus . . . exists where . . . the petitioner was a party to the administrative proceeding which the court is to review. Thus 'party status' in the administrative proceeding is equated with the 'beneficial interest' required by [Code of Civil Procedure] section 1086." (*Id.* at pp. 316-317, fn. 7.) However, this discussion is dicta regarding an issue that was not raised by the parties. (*Id.* at p. 316, fn. 7 ["[t]he

issue of petitioners' standing to maintain the present proceeding is not raised before this court"].) Therefore, we do not give weight to it.

The existence of an ongoing interest is also suggested in *Memorial Hospital*, *supra*, 28 Cal.App.3d 167, which Clear Channel relies on prominently for its participation argument. The plaintiffs, four Los Angeles area accredited acute medical facilities, objected in administrative proceedings to another hospital's application to an area health planning council to convert that hospital from a convalescent to an acute facility. (*Id*. at pp. 171, 173.) After the application approval, an overseeing state council received a notice of appeal and petition for a hearing, apparently initiated by more than one-third of the board members of the area health planning council. (*Id*. at pp. 172-173.) After some of these members had their names removed, the state council withdrew the petition and closed the appeal. (*Ibid*.) The plaintiff hospitals, contending this was invalid, demanded that a poll of voting members of the state council occur, as purportedly required by statute; defendants refused to do so, leading to the petition. (*Id*. at pp. 173-174.)

The real parties in interest demurred, including on the ground that the plaintiff hospitals lacked a beneficial interest, and the trial court agreed. (*Memorial Hosp.*, *supra*, 28 Cal.App.3d at pp. 170-171, 174.) The plaintiff hospitals appealed. (*Id*. at p. 171.) The appellate court found that the plaintiff hospitals had standing based on their right by statute and administrative regulations to take part in the administrative proceedings below, another actual participation. (*Id*. at pp. 177-179.) For these and other reasons, the court reversed the judgment. (*Id*. at pp. 179-180.)

Thus, Clear Channel argues, the court in *Memorial Hospital* held that a party's right to participate in an administrative hearing was sufficient to establish standing. To the extent this is the case, we disagree with the decision for the reasons stated herein. However, the appellate court's discussion of the facts suggests it did not intend its holding to extend this far because it stated, without further explanation, that the plaintiff hospitals were "affected" by the application of the real party in interest. (*Memorial*

Hosp., supra, 28 Cal.App.3d at p. 171.)[9] In other words, *Memorial Hospital*'s discussion suggests the petitioners had ongoing interests as well.

As support for its status argument, Clear Channel also cites cases that found a permit holder has standing to challenge administrative rulings. However, the facts of each case also indicate that the permit holder was seeking to engage in continuing activities. In *County of Okanogan v. Nat'l Marine Fisheries Serv.* (9th Cir. 2003) 347 F.3d 1081, the court concluded that one of the plaintiffs seeking declaratory relief "indisputably had standing" as a permit holder. (*Id*. at pp. 1083-1084.) The case involved a challenge to the Forest Service's new special use permit requirements that would restrict the plaintiff's access and use of water from a stream, which plaintiff had been using for some time. (*Ibid*.) The plaintiff's ongoing interest in the use of the stream water was so obvious it did not merit discussion.

Similarly, in *Covert v. State Board of Equalization*, *supra*, 29 Cal.2d 125, the court reviewed a decision by the Board of Equalization to revoke the on-sale liquor license issued to an operator of a café that was an ongoing concern. The café owner's desire to have the ongoing use of the license was apparent.

The parties also had direct and substantial continuing interests in *Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d. 495 (*Sierra Club*), and *Greif v. Dullea* (1944) 66 Cal.App.2d 986, relied upon by Clear Channel for the proposition that a permit holder, as an indispensable party in administrative proceedings regarding the permit, had a right to appear as a party in court and defend its legal rights. In *Sierra Club*, the petitioner, an environmental group, sought to challenge the grant of a permit to a building developer for a development in a scenic area along the Pacific coast. (*Sierra Club*, at p.

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[9] The court's discussion gives no insight into how the plaintiff hospitals were affected, although they may well have had their business interests affected by a new competitor. We do not mean to suggest, however, that business interests necessarily provide the requisite beneficial interest. To the contrary, given the zone of interests protected and regulated by the Board's decision, we conclude business interests do not establish a beneficial interest here.

498.) In *Grief*, the permit holder was a taxi cab company, in an action seeking to cancel permits authorizing it to operate taxi cabs in San Francisco. (*Greif*, at pp. 994-995.) In both cases, the courts found the permit holders were indispensable parties because, if they were not joined, the grant of relief sought would affect their interests. (*Sierra Club*, at p. 501; *Greif*, at p. 994.)

In short, in order to establish a beneficial interest in an administrative decision, California law requires that a petitioner demonstrate that it will suffer an "injury in fact" that comes within the "zone of interests" affected by the decision (See *Associated Builders, supra,* 21 Cal.4th at p. 361; *Waste Management, supra,* 79 Cal.App.4th at p. 1233). Participation in the proceedings, or status as a party or permit holder, are not *alone* sufficient to establish standing. The case law cited by Clear Channel does not contradict this requirement because their discussions indicate the petitioners had direct and substantial ongoing interests that were affected by the challenged administrative decisions. Therefore, we conclude that Clear Channel's participation and status arguments are without merit.

III. *The Service Requirements of Government Code Section 65009*

Respondents argue as a separate ground for affirming the trial court's sustaining of their demurrers that Clear Channel's amended petition was barred because Clear Channel did not serve the real parties in interest within the 90-day deadline for service stated in Government Code section 65009 (section 65009). We conclude that this 90-day service deadline does not apply to real parties in interest and, therefore, reject respondents' argument.

Respondents made this same service argument in their demurrers below. The court did not address this issue in its order, sustaining respondents' demurrers without leave to amend based on standing only. At the demurrer hearing, it said that it "quite frankly didn't think so" when the Board's counsel asserting that it was "an important issue and an equally valid ground for sustaining the demurrer." Regardless, as we have indicated, "unless failure to grant leave to amend was an abuse of discretion, the appellate

court must affirm the judgment if it is correct on any theory." (*Hendy v. Losse*, *supra*, 54 Cal.3d at p. 742.) Therefore, we address the issues raised by respondents.

In interpreting statutory language, " '[w]e begin with the fundamental rule that our primary task is to determine the lawmakers' intent.' [Citation.] The process of interpreting the statute to ascertain that intent may involve up to three steps. . . . [Citations.] We have explained this three-step sequence as follows: 'we first look to the plain meaning of the statutory language, then to its legislative history and finally to the reasonableness of a proposed construction.' " (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082.)

"In the first step of the interpretive process we look to the words of the statute themselves. [Citations.] The Legislature's chosen language is the most reliable indicator of its intent because ' "it is the language of the statute itself that has successfully braved the legislative gauntlet." ' [Citations.] We give the words of the statute 'a plain and commonsense meaning' unless the statute specifically defines the words to give them a special meaning." (*MacIsaac v. Waste Management Collection & Recycling, Inc.*, *supra*, 134 Cal.App.4th at pp. 1082-1083.) " 'It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed.' " (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998.) Furthermore, we are not empowered to insert language into a statute. "Doing so would violate the cardinal rule of statutory construction that courts must not add provisions to statutes." (*Ibid.*; see also Code Civ. Proc., § 1858 ["[i]n the construction of a statute . . . , the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted"].)

We are also mindful, however, that "[o]ur primary goal is to implement the legislative purpose, and, to do so, we may refuse to enforce a literal interpretation of the enactment if that interpretation produces an absurd result at odds with the legislative goal." (*Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 527.)

Section 65009 relates to actions challenging local government decisions. It provides that an action or proceeding cannot be maintained (subject to an inapplicable

exception) "to attack, review, set aside, void or annul any decision on the matters listed in Sections 65901 or 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit" (§ 65009, subd. (c)(1)(E)), "*unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision*." (§ 65009, subd. (c)(1), italics added.) This limitations period applies "to a broad range of local zoning and planning decisions" (*Honig v. San Francisco Planning Dept.*, *supra*, 127 Cal.App.4th at p. 526), including "the grant, denial, or imposition of conditions on a variance or permit." (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 765.)

Respondents point out that section 65009's purpose "is to provide certainty for property owners and local governments regarding decisions made pursuant to this division." (§ 65009, subd. (a)(3).) Furthermore, "[u]pon the expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding." (§ 65009, subd. (e).) Division Five of this District has stated that "[t]he short limitations period provided by [section 65009], subdivision (c) serves the important legislative purpose of permitting the rapid resolution of legal challenges to local zoning and planning decisions. [Citation.] 'The express and manifest intent of section 65009 is to provide local governments with certainty, after a short 90-day period for facial challenges, in the validity of their zoning enactments' and their zoning and planning decisions." (*Honig v. San Francisco Planning Dept.*, *supra*, 127 Cal.App.4th at p. 528.)

The parties do not contest that section 65009 applies to Clear Channel's petition, nor do they contest that Clear Channel properly served the Board within the 90-day deadline set in section 65009, subdivision (c)(1)(E). They dispute the date the Lees were served, but do not dispute that the Lees were served more than 90 days after the Board's March 19, 2008 decision, but before the demurrers were filed.

The Board argues that "[u]nder [section 65009], parties like Clear Channel seeking to challenge a [Board] decision are required to file and serve *all* parties within 90 days of the [Board's] decision" (italics added), relying on *Beresford Neighborhood Assn. v. City*

of San Mateo (1989) 207 Cal.App.3d 1180 (*Beresford*), as well as the case *Beresford* follows, *Sierra Club, supra*, 95 Cal.App.3d 495. The Board argues that *Beresford* "held that a party challenging various permit approvals *was required* to file and serve both the governmental respondent and the private real party in interest within the timeline set forth in . . . section 65009." (Italics added.)

Like the Board, the Lees argue that Clear Channel's amended petition is time barred by section 65009 because of Clear Channel's failure to serve the Lees within the 90-day service deadline. The Lees argue that, "[a]lthough the code section refers to 'legislative bodies,' [section] 65009's service requirements apply equally to real parties in interest as they do to governmental respondents," and that, given the legislative purpose, it would be absurd to enforce a literal interpretation of section 65009. Like the Board, the Lees rely significantly on *Beresford, supra*, 207 Cal.App.3d 1180, and *Sierra Club, supra*, 95 Cal.App.3d 495.

Respondents' arguments are not persuasive. *Beresford* and *Sierra Club* determined that under the circumstances, it was within the trial court's *discretion* pursuant to Code of Civil Procedure section 389 to conclude that the failure to name and serve an indispensable party were grounds for dismissal, not that such a dismissal was *required* by a limitations period such as that stated in section 65009.

The *Beresford* court reviewed the lower court's sustaining, without leave to amend, of a demurrer by the City of San Mateo to a complaint filed by the Beresford Neighborhood Association and an individual (collectively, Beresford). (*Beresford, supra*, 207 Cal.App.3d at p. 1185.) Beresford sought declaratory and injunctive relief, and a writ of mandate against the City of San Mateo regarding certain zoning and planning approvals for a senior citizens housing project. (*Ibid*.) The trial court sustained the City of San Mateo's demurrer without leave to amend, and Beresford appealed. (*Ibid*.) The trial court dismissed certain zoning claims because the amended complaint had failed to name the developer as a defendant; San Mateo argued, and the trial court apparently agreed, that the developer was an indispensable party, and that the claims had

to be dismissed because the developer had not been joined prior to the expiration of the 120-day deadline for statute of limitations. (*Id.* at pp. 1187-1188.)

The appellate court affirmed the trial court, relying heavily on *Sierra Club*. (*Beresford, supra,* 207 Cal.App.3d at pp. 1188-1190.) The court concluded, based on *Sierra Club*, that it was too late for Beresford to add the developer because "[a] developer should not be required to postpone a project while awaiting commencement of litigation challenging its legality." (*Beresford*, at pp. 1189-1190.)

Beresford is inapposite to the present case. Beresford failed to name or serve at all the developer prior to the court's review of the demurrer. Here, however, the Lees were named in the original petition, and served prior to the demurrer being held. This is significant because *Sierra Club* makes clear that a court's determination to sustain a demurrer to an action for a party's failure to join an indispensable party (presuming that the Lees are indispensable parties) is *discretionary*, not mandatory, and determined pursuant to the guidelines articulated in Code of Civil Procedure section 389. (*Sierra Club, supra,* 95 Cal.App.3d at pp. 499-500.) Respondents have not argued the application of those criteria to the present case, insisting instead that the court *must* sustain a demurrer based on the 90-day deadline articulated in section 65009, subdivision (c)(1)(E). The cases simply do not support this argument.

The Board also cites as support *Gonzalez v. County of Tulare* (1998) 65 Cal.App.4th 777, which is equally unpersuasive. There, the appellate court affirmed the trial court's sustaining of a demurrer to a mandamus petition, based on its holding that the petition was barred because it "was not served upon *respondents* within the then existing . . . limit of . . . former section 65009, subdivision (c), even though the action was timely filed." (*Id.* at p. 791, italics added.) The Board argues that this is a direct reference to all of the respondents to the appeal, including the real party in interest, Borba-Mikaelian, Inc. (Borba) (*id.* at p. 780), who stands in a position analogous to the Lees. This argument is an understandable misreading of the case. Although it appears that Borba was a respondent in the appeal, the *Gonzalez* court's reference to "respondents" plainly refers to the multiple legislative bodies, and not Borba. The court notes that the demurrer

was argued by "respondents County of Tulare, Tulare County Board of Supervisors and Tulare County Planning Commission . . ." (*id*. at pp. 780, 782-783, 791), and consistently refers to the legislative bodies as "respondents" throughout its discussion of this service issue. (E.g., *id*. at p. 781 ["[a]ppellants sought a writ of mandate compelling *respondents* to rescind ordinance No. 3130 and the use permits and to review and act upon Borba's applications"]; *id*. at p. 791 [referring to "*respondents'* demurrer"], italics added.) Therefore, *Gonzalez* does not provide precedent for respondents' position here.

Section 65009's service deadline refers only to service on a "legislative body." It cannot be interpreted in the manner suggested by respondents without our inserting additional language. We conclude from its plain language that section 65009 does not require service on real parties in interest within 90 days. We do not consider our construction to be contrary to legislative intent, particularly in light of the courts' discretionary powers regarding joinder of indispensable parties, as explained in *Beresford*, *supra*, 207 Cal.App.3d 1180, and *Sierra Club*, *supra*, 95 Cal.App.3d 495.

"If the statutory language is clear and unambiguous, our task is at an end, for there is no need for judicial construction. [Citations.] In such a case, there is nothing for the court to interpret or construe." (*MacIsaac v. Waste Management Collection & Recycling, Inc.*, *supra*, 134 Cal.App.4th at p. 1083.) Therefore, we need not further address the other arguments made by the parties.

DISPOSITION

The judgment is reversed, and the matter remanded to the trial court to proceed consistent with this opinion. The parties are to bear their own costs of appeal.

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Lambden, J.

We concur:

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Kline, P.J.

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Haerle, J.

Clear Channel Outdoor, Inc. v. Board of Appeals of the City and County of San Francisco; Lee et al. (A125636)