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14 UNITED STATES DISTRICT COURT  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 PHILLIPS 66 COMPANY,

17 Plaintiff,

18 v.

19 CITY OF RICHMOND; CITY COUNCIL OF  
20 THE CITY OF RICHMOND,

21 Defendants,

22 and

23 SIERRA CLUB and SAN FRANCISCO  
24 BAYKEEPER,

25 Proposed Defendant-Intervenors.

Case No. 4:20-cv-01643-YGR

**SIERRA CLUB AND SAN FRANCISCO  
BAYKEEPER'S NOTICE OF MOTION,  
MOTION TO INTERVENE,  
MEMORANDUM IN SUPPORT OF  
MOTION, AND REQUEST TO FILE  
RULE 12(b)(6) MOTION TO DISMISS**

Hearing: August 4, 2020  
Time: 2:00 p.m.  
Place: Courtroom 1  
1301 Clay Street, Oakland, CA

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1 **NOTICE OF MOTION AND MOTION**

2 NOTICE IS HEREBY GIVEN, pursuant to Civil Local Rule 7-2, that on August 4, 2020, at  
3 2:00 p.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable  
4 Yvonne Gonzalez Rogers, at the United States Courthouse, 1301 Clay Street, Oakland, CA 94612,  
5 Sierra Club and San Francisco Baykeeper, by counsel, will move the Court for leave to intervene as  
6 defendant-intervenors in the above-entitled action.

7 Pursuant to Federal Rule of Civil Procedure 24, Sierra Club and San Francisco Baykeeper  
8 respectfully move to intervene as defendant-intervenors in the above-captioned case. Counsel for  
9 Plaintiff Phillips 66 Company have been consulted; Plaintiff is reserving its position pending review  
10 of this motion, however, it anticipates opposing this motion. Defendants City of Richmond and City  
11 Council of the City of Richmond do not oppose intervention. This motion is supported by the  
12 accompanying Memorandum; Declarations of Avi Atid, Minda Berbeco, Sejal Choksi-Chugh,  
13 Elizabeth Dortch, Aaron Isherwood, Colin O'Brien, and Jess Parker; a Proposed Motion to Dismiss;<sup>1</sup>  
14 and such oral argument as the Court may allow.

15 WHEREFORE, Sierra Club and San Francisco Baykeeper pray that the Court grant the  
16 instant motion, and thereby grant Sierra Club and San Francisco Baykeeper leave to intervene as  
17 defendants in this action.

18 In addition, if intervention is granted, Sierra Club and San Francisco Baykeeper further  
19 request that the Court accept their Rule 12(b)(6) Motion to Dismiss lodged concurrently with this  
20 motion.

21  
22  
23 <sup>1</sup> Federal Rule of Civil Procedure 24 requires an intervention motion “be accompanied by a pleading  
24 that sets out the claim or defense for which intervention is sought.” Fed. R. Civ. P. 24(c). To comply  
25 with this requirement, Sierra Club and San Francisco Baykeeper are filing, contemporaneously with  
26 this motion, a proposed motion to dismiss, which addresses their position on each of the claims in  
27 the Complaint (ECF No. 1). *See Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 474 (9th  
28 Cir.1992) (“Courts, including [the Ninth Circuit], have approved intervention motions without a  
[Fed. R. Civ. P. 7(a)] pleading where the court was otherwise apprised of the grounds for the  
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*Smith v. Pangilinan*, 651 F.2d 1320, 1325-26 (9th Cir. 1981) (intervenor’s statement in motion  
papers satisfied Rule 24(c)); *Westchester Fire Ins. Co. v Mendez*, 585 F.3d 1183, 1188-89 (9th Cir.  
2009) (same).

**MEMORANDUM IN SUPPORT****I. INTRODUCTION**

Proposed Defendant-Intervenors Sierra Club and San Francisco Baykeeper (collectively, “Proposed Intervenors”) request the Court grant them leave to intervene as of right, or in the alternative, permission to intervene, in the above-captioned case. Proposed Intervenors seek to protect their significant interests in the validity of Richmond Ordinance No. 05-20 N.S., which prohibits the handling and storage of coal or petroleum coke (“petcoke”) at any facility in the City of Richmond. Proposed Intervenors have worked for years and devoted substantial resources to protect the health and environment of communities in Richmond. Because storage and handling of coal and petcoke results in fugitive emissions of particulate matter that are harmful to human health and the natural environment, they supported adoption of the Ordinance.

**II. BACKGROUND**

The Levin-Richmond Terminal (“Terminal”) is located at 402 Wright Avenue in the City of Richmond and situated on the San Francisco Bay. Currently, it is the only facility in Richmond that stores and handles coal and petcoke. O’Brien Decl., Ex. 1 (City Agenda Report, Apr. 23, 2019) at 2. Coal is offloaded from railroad cars, stored in massive, uncovered stockpiles at the Terminal, and then later loaded onto ships that depart from the Terminal. *See* City Agenda Report, Feb. 4, 2020 at 2, ECF No. 21-2. Similarly, petcoke is offloaded from trucks, stored in massive, uncovered piles at the Terminal, and later loaded on to ships that depart from the Terminal. *See id.*

Uncovered coal and petcoke stockpiles emit particulate matter (PM<sub>10</sub>) and fine particulate matter (PM<sub>2.5</sub>) when exposed to wind. *See* Ordinance No. 05-20 N.S. at 1, ECF No. 21-1 (hereafter “Ordinance”); O’Brien Decl., Ex. 2 (EPA petcoke webpage) at 1. Particulate matter and fine particulate matter are also released when coal and petcoke are unloaded from railroad cars or trucks and transported to storage piles or transported from storage piles and loaded onto ships. *See* Ordinance at 1. Fine particulate matter is so small that it is invisible to the human eye. O’Brien Decl., Ex. 3 (EPA PM webpage), at 1. As a point of comparison, the average human hair is about seventy micrometers in diameter, meaning the diameter of the largest PM<sub>2.5</sub> particle is approximately thirty times smaller. *Id.* at 1-2.

1 Both PM<sub>10</sub> and PM<sub>2.5</sub> can easily pass through the throat and nose and “[o]nce inhaled, these  
2 particles can affect the heart and lungs and cause serious health effects.” O’Brien Decl., Ex. 2 (EPA  
3 petcoke webpage) at 1; *see also* Ordinance at 1. Owing to their extremely small size, PM<sub>2.5</sub> can  
4 penetrate deep into the lungs and even into the bloodstream, thus posing “the greatest risk to health.”  
5 O’Brien Decl., Ex. 3 (EPA PM webpage) at 2. The U.S. Environmental Protection Agency (“EPA”)  
6 has found “[a]n extensive body of scientific evidence indicates that breathing in PM<sub>2.5</sub> over the  
7 course of hours to days (short-term exposure) and months to years (long-term exposure) can cause  
8 serious public health effects . . . .” O’Brien Decl., Ex. 4 (EPA factsheet) at 1. These serious public  
9 health effects include premature death, aggravation of respiratory and cardiovascular disease, and  
10 changes in lung function. 72 Fed. Reg. 20,586, 20,586-87 (Apr. 25, 2007). Health consequences also  
11 include asthma attacks, chronic respiratory disease, harmful developmental and reproductive effects,  
12 and cancer. O’Brien Decl., Ex. 4 (EPA factsheet) at 2.

13 According to EPA, even “[s]hort-term exposure (from less than 1 day up to several days) to  
14 PM<sub>2.5</sub> is likely causally associated with mortality from cardiopulmonary diseases, increased  
15 hospitalization and emergency department visits for cardiopulmonary diseases, increased respiratory  
16 symptoms, decreased lung function, and changes in physiological indicators for cardiovascular  
17 health.” 72 Fed. Reg. 54,112, 54,128 (proposed Sept. 21, 2007). EPA and other scientific authorities  
18 have concluded that there is no safe level of PM<sub>2.5</sub> exposure. *See, e.g.*, 78 Fed. Reg. 3086, 3098 (Jan.  
19 15, 2013) (stating that “no population threshold, below which it can be concluded with confidence  
20 that PM<sub>2.5</sub>-related effects do not occur, can be discerned from the available evidence”); *United States*  
21 *v. Westvaco Corp.*, No. MJG-00-2602, 2015 WL 10323214, at \*9 (D. Md. Feb. 26, 2015) (“majority  
22 scientific consensus . . . is that the harm from exposure to PM<sub>2.5</sub> is linear, and there is no known  
23 threshold below which PM<sub>2.5</sub> is not harmful to human health”).

24 Though healthy adults may experience temporary symptoms from exposure to elevated levels  
25 of PM<sub>2.5</sub>, “[p]eople most at risk from particle pollution include people with diseases that affect the  
26 heart or lung (including asthma), older adults, children, and people of lower socioeconomic status.”  
27 O’Brien Decl., Ex. 4 (EPA factsheet), at 1. “[P]regnant women, newborns, and people with certain  
28



1 health conditions, such as obesity or diabetes, also may be at increased risk of PM-related health  
2 effects.” *Id.*

3 In addition to causing health issues due to impacts on air quality, fugitive coal and petcoke  
4 dust also have other serious effects. For example, they negatively impact the environment both by  
5 adjacent polluting waterways and contaminating sensitive habitats. *See* Ordinance at 1.

6 The City has received complaints from members of the community who live and work near  
7 the Terminal regarding fugitive coal dust. *Id.*; City Agenda Report, Feb. 4, 2020 at 1, 2. Concerned  
8 about an increase in volume in coal stored and handled at the Terminal and the health impacts of  
9 particulate matter emissions from coal and petcoke, the Richmond City Council began considering  
10 ways to protect residents and visitors from fugitive coal and petcoke dust emissions from the  
11 Terminal at least as early as May 2018. *See* Isherwood Decl., Ex. 1 at 1; Choksi-Chugh Decl. ¶ 15a.  
12 In 2018, Mayor Tom Butt facilitated a study of dust samples collected by Richmond residents, and  
13 five out of the seven samples tested positive for coal. City Agenda Report, Feb. 4, 2020 at 2. On  
14 December 18, 2018, the City Council referred a draft ordinance banning the storage and handling of  
15 coal and petcoke introduced by Councilmember Martinez to City staff. The Council requested that  
16 the staff return an ordinance “at least as strong” as the draft ordinance. *Id.*

17 On July 18, 2019, the City of Richmond’s Planning Commission held a hearing to consider  
18 whether to recommend adoption of the proposed land use ordinance. *Id.* Through written and oral  
19 testimony, Proposed Intervenors supported the City staff’s position that the Planning Commission  
20 recommend adoption of the proposed ordinance. *See* Isherwood Decl. ¶ 4, Ex. 2; Berbeco Decl. ¶ 11;  
21 Choksi-Chugh Decl. ¶ 15d. The Planning Commission voted against recommending adoption of the  
22 proposed ordinance, recommending instead that the City wait for more studies. *See* City Agenda  
23 Report, Feb. 4, 2020 at 11. On December 3, 2019, the City Council held a hearing on the proposed  
24 ordinance. *See* Ordinance at 2. On January 14, 2020, the City Council voted to pass the ordinance on  
25 its first reading. O’Brien Decl. Ex. 5 (Richmond City Council Meeting Minutes, Jan. 14, 2020) at 7.

26 On February 4, 2020, the Richmond City Council enacted the Ordinance. Ordinance at 5. The  
27 Ordinance reflects the City Council’s determination that the “ordinance is necessary for public  
28 health and safety as it will reduce particulate matter emissions and toxic exposure from coal and

1 petroleum coke storage, thus promoting clean air and reducing the pollution burdens borne  
2 disproportionately by individuals living and working near certain industrial areas.” Ordinance at 4.

3 Plaintiff Phillips 66 Company filed this action on March 4, 2020. Compl., ECF No. 1. The  
4 Complaint’s contentions allege that the Ordinance violates the Commerce Clause, U.S. Const. art. I,  
5 § 8, and that it illegally impairs contractual relations, U.S. Const., Art. 1, § 10. Compl. at ¶¶ 40-53,  
6 ECF No. 1.

7 Proposed Intervenor Sierra Club is a nonprofit environmental organization that supported  
8 adoption of the Ordinance. Sierra Club is a national organization of nearly 778,000 members,  
9 including more than 165,000 members in California. Berbeco Decl. ¶ 2. Sierra Club is dedicated to  
10 exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the  
11 responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to  
12 protect and restore the quality of the natural and human environment; and to using all lawful means  
13 to carry out these objectives. Berbeco Decl. ¶ 2. Consistent with its mission, Sierra Club is  
14 committed to stopping the many environmental and human health impacts associated with coal and  
15 fossil fuels. Berbeco Decl. ¶ 2.

16 Sierra Club is a grassroots, volunteer-led organization that works with local communities to  
17 advocate in various ways to reduce industrial pollution and protect public health. Berbeco Decl. ¶¶ 3,  
18 5. These volunteer leaders and members have a connection to the community which allows Sierra  
19 Club to work alongside other community members to address their concerns. Berbeco Decl. ¶ 5.

20 Sierra Club members live, work, and recreate in Richmond near the Terminal. Berbeco Decl.  
21 ¶¶ 2, 7; Atid Decl. ¶¶ 3, 6; Dortch Decl. ¶¶ 2, 9, 11. Pollution from the Terminal directly affects  
22 them, and they have an interest in ensuring the safety and health of their community. Berbeco Decl.  
23 ¶¶ 2, 6, 7, 8; Atid Decl. ¶¶ 12-15; Dortch Decl. ¶¶ 10, 11, 13, 15. Sierra Club advocated for and  
24 supported the Ordinance by meeting with community members to discuss their concerns about coal  
25 and petcoke dust from the Terminal and consider opportunities to advocate for their phase-out.  
26 Berbeco Decl. ¶ 8. Club members met with the Bay Area Air Quality Management District  
27 (“BAAQMD”) to discuss coal and air quality issues in Richmond. Berbeco Decl. ¶ 9. Sierra Club  
28 sent letters to the City supporting proposed bans on the storage and handling of petcoke, participated

1 in numerous calls and meetings with City Council members to discuss the Ordinance, and attended  
2 and testified at City Council and Planning Commission hearings. Berbeco Decl. ¶¶ 10-11, Isherwood  
3 Decl. ¶¶ 3-7, Exs. 1-5 (letters). They also collected and facilitated the testing of dust samples for coal  
4 and petcoke, engaged in phone banking, and spoke with the media. Berbeco Decl. ¶¶ 12-17.

5 Proposed Intervenor San Francisco Baykeeper (“Baykeeper”) is a regional nonprofit  
6 organization that also supported the Ordinance. Baykeeper is dedicated to protecting the San  
7 Francisco Bay-Delta estuary for the benefit of its ecosystems and the surrounding human  
8 communities. Choksi-Chugh Decl. ¶ 6, 25-26. As part of this goal, Baykeeper works to ensure that  
9 state and federal environmental laws are implemented and enforced. Choksi-Chugh Decl. ¶ 7.  
10 Baykeeper has a lengthy history of working on water quality issues in and around Richmond. That  
11 history includes initiating an enforcement action to reduce sewage discharges into the San Francisco  
12 Bay, bringing citizen enforcement actions under the Clean Water Act against multiple industrial  
13 facilities in Richmond for illegally discharging pollutants into the Bay, and advocating for safer  
14 limits on the amount of toxic selenium allowed into the Bay from Richmond’s Chevron refinery.  
15 Choksi-Chugh Decl. ¶¶ 7, 23a-d; *see also id.* ¶¶ 24-28. In 2011, Baykeeper members observed dust  
16 from large piles of coal at the Terminal blowing into the Bay. Choksi-Chugh Decl. ¶ 10. Baykeeper  
17 discovered that the Terminal’s methods of storing and handling coal, petcoke, and other materials  
18 allowed toxic materials to be washed and blown into the Bay. Consequently, in 2012, it filed a  
19 successful lawsuit under the Clean Water Act that stopped some of the pollution from the Terminal,  
20 although it did not address many other health, air, and water quality impacts. Choksi-Chugh Decl. ¶¶  
21 11-12.

22 Baykeeper has over 5,000 members and supporters who primarily reside in the San Francisco  
23 Bay Area, most of whom have longstanding and ongoing personal interests in the mission of the  
24 organization because they live, work, and recreate in or around the San Francisco Bay. Choksi-  
25 Chugh Decl. ¶ 8; Parker Decl. ¶¶ 8, 16-17, 23-25. Baykeeper’s members also live, work, and  
26 recreate in Richmond near the Terminal, and have an interest in ensuring that their community can  
27 be a safe and healthy place. Choksi-Chugh Decl. ¶¶ 9, 18, 20-22; Parker Decl. ¶¶ 8, 15-16, 23-25.  
28 Baykeeper advocated for and supported the Ordinance by submitting written comments and letters,

1 participating in and testifying at public hearings before the City Council, vetting draft ordinances,  
 2 and educating Council members on the impacts of coal and petcoke on public health and safety and  
 3 on the Bay. Choksi-Chugh Decl. ¶ 15a-i.

### 4 **III. STANDARDS FOR INTERVENTION**

5 The Ninth Circuit has established a four-part test for deciding applications for intervention as  
 6 of right under Federal Rule of Civil Procedure 24(a):

7 (1) the motion must be timely; (2) the applicant must claim a “significantly  
 8 protectable” interest relating to the property or transaction which is the subject of the  
 9 action; (3) the applicant must be so situated that the disposition of the action may as a  
 practical matter impair or impede its ability to protect that interest; and (4) the  
 applicant’s interest must be inadequately represented by the parties to the action.

10 *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (quoting *Sierra Club v.*  
 11 *U.S. Env’tl. Prot. Agency*, 995 F.2d 1478, 1481 (9th Cir. 1993)). If an applicant meets these  
 12 standards, they must be permitted to intervene. *Yniguez v. Ariz.*, 939 F.2d 727, 731 (9th Cir. 1991)  
 13 (citing *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527 (9th Cir. 1983)). An applicant need not  
 14 separately establish Article III standing. *See Va. House of Delegates v. Bethune-Hill*, 139 S. Ct.  
 15 1945, 1951-52 (2019).

16 Rule 24(a) is construed “broadly in favor of proposed intervenors,” taking into account  
 17 “practical and equitable considerations.” *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th  
 18 Cir. 2002) (citations omitted). Rule 24(a) does not require a specific legal or equitable interest, and  
 19 “the ‘interest’ test is primarily a practical guide to disposing of lawsuits by involving as many  
 20 apparently concerned persons as is compatible with efficiency and due process.” *Fresno Cnty. v.*  
 21 *Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir.  
 22 1967)). The allegations of a proposed intervenor must be credited “as true absent sham, frivolity or  
 23 other objections.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

24 Additionally, under Rule 24(b)(1)(B), courts have “broad discretion” to grant permissive  
 25 intervention to applicants that, through a timely motion, assert a claim or defense that shares a  
 26 common question of law or fact with the principal action. *Orange Cnty. v. Air Cal.*, 799 F.2d 535,  
 27 539 (9th Cir. 1986) (citation omitted). In exercising its discretion, a court must consider whether  
 28 intervention will cause undue delay or prejudice existing parties. *See Fed. R. Civ. P. 24(b)(1)(B)(3).*

1 **IV. ARGUMENT**

2 For the following reasons, the Court should grant Proposed Intervenors intervention as of  
3 right under Federal Rule of Civil Procedure 24(a), or, in the alternative, the Court should grant  
4 permissive intervention under Rule 24(b).

5 **A. The Court should grant intervention as of right.**

6 As detailed below, Proposed Intervenors satisfy the four-part test and are entitled to intervene  
7 as a matter of right. Their motion is timely, they have demonstrated they have a significantly  
8 protectable interest that may be impaired by this action, and they have made a compelling showing  
9 that the City “may not” adequately represent their interests.

10 **1. The motion is timely.**

11 A motion to intervene under Rule 24(a) must be timely. Fed. R. Civ. P. 24(a)(2). Timeliness  
12 is evaluated according to three factors: “(1) the stage of the proceeding at which an applicant seeks  
13 to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.” *United*  
14 *States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004) (quoting *Cal. Dep’t of Toxic*  
15 *Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002)).  
16 When a motion is made “at an early stage of the proceedings,” it follows that the motion will neither  
17 prejudice other parties nor delay the proceeding. *Citizens for Balanced Use v. Mont. Wilderness*  
18 *Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011).

19 Proposed Intervenors’ motion is timely because this case is in its earliest stages. The  
20 Complaint was filed on March 4, 2020. ECF No. 1. This motion is being filed less than three months  
21 later, shortly after the Defendant City filed its first responsive pleading. No discovery has occurred  
22 and the first Case Management Conference has not yet happened. No substantive matters have been  
23 heard or ruled upon.

24 Because this motion is filed in the earliest stages of this action, the motion is timely and  
25 granting intervention will neither prejudice other parties nor cause delay. As the Ninth Circuit has  
26 explained: “the parties would not have suffered prejudice from the grant of intervention at that early  
27 stage, and intervention would not cause disruption or delay in the proceedings.” *Citizens for*  
28 *Balanced Use*, 647 F.3d at 897 (finding motion timely when filed three months after the complaint

1 and less than two weeks after defendant filed its answer); *Idaho Farm Bureau Fed'n v. Babbitt*, 58  
 2 F.3d 1392, 1397 (9th Cir. 1995) (holding motion timely when filed four months after complaint and  
 3 two months after answer, but “before any hearings or rulings on substantive matters”); *Natural Res.*  
 4 *Def. Council v. McCarthy*, No. 16-cv-02184-JST, 2016 WL 6520170, at \*3 (N.D. Cal. Nov. 3, 2016)  
 5 (finding motion timely when filed before answer and “any substantive orders”).

6 **2. Proposed Intervenors have protectable interests relating to the validity of**  
 7 **the Ordinance.**

8 Proposed Intervenors satisfy the second element of intervention as of right because they have  
 9 multiple “significantly protectable” interests related to the issues that are the subjects of this action.  
 10 *Wilderness Soc’y*, 630 F.3d at 1177. The interest test is a threshold question and “does not require a  
 11 specific legal or equitable interest.” *Id.* at 1179. Nor does it require that the asserted interest be  
 12 protected by the statutes under which litigation is brought. *Id.* Instead, “the operative inquiry should  
 13 be whether the ‘interest is protectable under some law’ and whether ‘there is a relationship between  
 14 the legally protected interest and the claims at issue.’” *Id.* at 1180 (quoting *Sierra Club*, 995 F.2d at  
 15 1484). “[I]f the resolution of the plaintiff’s claims actually will affect the applicant,” the relationship  
 16 requirement is met. *Donnelly v. Glickman*, 159 F.3d 405, 410 (9th Cir. 1998); *see also California ex*  
 17 *rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (An applicant for intervention  
 18 satisfies the interest test “if it will suffer a practical impairment of its interests as a result of the  
 19 pending litigation.”).

20 **a. Proposed Intervenors’ members are precisely those individuals the**  
 21 **Ordinance was enacted to protect.**

22 Proposed Intervenors have a protectable interest in this case because their members are “the  
 23 intended beneficiaries of this law.” *California ex rel. Lockyer*, 450 F.3d at 441. Public interest  
 24 groups have a protectable interest in litigation when the underlying action challenges a legislative  
 25 measure that was intended to protect their members. *Andrus*, 622 F.2d at 438–39 (finding a  
 26 protectable interest for public interest groups where “[t]he individual members . . . are precisely  
 27 those Congress intended to protect . . . and precisely those who will be injured” if the challenged law  
 28 were invalidated). For environmental groups seeking to intervene to defend a law, “[i]t is enough

1 that the [groups'] members benefit from the challenged legislation by way of improved air quality  
2 and health.” *Cal. Dump Truck Owners Ass’n v. Nichols*, 275 F.R.D. 303, 307 (E.D. Cal. 2011).

3 Here, Proposed Intervenors’ members are precisely those individuals whom the Ordinance  
4 was designed to protect, and they are precisely those who will be injured if the Ordinance is  
5 invalidated. The Richmond City Council determined that the “ordinance is necessary for public  
6 health and safety as it will reduce particulate matter emissions and toxic exposure from coal and  
7 petroleum coke storage, thus promoting clean air and reducing the pollution burdens borne  
8 disproportionately by individuals living and working near certain industrial areas.” Ordinance at 4.  
9 Proposed Intervenors’ members fall well within that sphere of protection, as they are community  
10 members, including residents of Richmond and people who regularly visit and work in the vicinity  
11 of the Terminal, and who are disproportionately exposed to coal and petcoke emissions. Berbeco  
12 Decl. ¶¶ 2, 7; Atid Decl. ¶¶ 3, 6; Dortch Decl. ¶¶ 2, 11; Choksi-Chugh Decl. ¶¶ 9, 16-22; Parker  
13 Decl. ¶¶ 8, 15-16, 23-25. Proposed Intervenors’ members have observed black dust on surfaces  
14 where they live and work, and that dust has tested positive for coal and petcoke. Dortch Decl. ¶¶ 7-8,  
15 11; Atid Decl. ¶¶ 7-9. As a result, they are understandably concerned about the health impacts from  
16 exposure to fugitive coal and petcoke dust from the Terminal. Dortch Decl. ¶¶ 10, 14-15; Atid Decl.  
17 ¶¶ 10, 12, 15; Berbeco Decl. ¶¶ 6, 8; Parker Decl. ¶¶ 12, 21, 25-26. Because Proposed Intervenors’  
18 members will continue to be exposed to coal and petcoke dust if the Ordinance is invalidated, the  
19 resolution of this case will unquestionably affect them. *See* Atid Decl. ¶ 14; Dortch Decl. ¶ 14;  
20 Parker Decl. ¶¶ 25-26. Thus, Proposed Intervenors and their members are the intended beneficiaries  
21 of the Ordinance and accordingly have a protectable interest implicated in this litigation.

22 **b. Proposed Intervenors supported passage of the Ordinance and**  
23 **participated throughout the decision-making process.**

24 Proposed Intervenors have an interest in this litigation because they worked extensively to  
25 secure the passage of the Ordinance. When a public interest group has been involved in a decision-  
26 making process that leads to the litigation, it satisfies the protectable interest prong for intervention  
27 as of right. *Idaho Farm Bureau Fed’n*, 58 F.3d at 1397 (citations omitted) (“A public interest group  
28 is entitled as a matter of right to intervene in an action challenging the legality of a measure it has

1 supported.”). For example, in *Sagebrush Rebellion, Inc. v. Watt*, the Audubon Society was entitled to  
 2 intervene in an action challenging the creation of a conservation area the Society had supported. 713  
 3 F.2d at 527-28. The Society had actively participated in the administrative process surrounding the  
 4 designation of the conservation area, and based on that participation, the Ninth Circuit held that  
 5 “there can be no serious dispute in this case concerning . . . the existence of a protectable interest on  
 6 the part of the applicant.” *Id.* at 528; *accord Idaho Farm Bureau Fed’n*, 58 F.3d at 1397–98 (finding  
 7 environmental groups that were active in the administrative process leading to endangered species  
 8 listing were entitled to intervene in litigation seeking to invalidate listing).

9 Proposed Intervenors vigorously supported and advocated for the passage of the Ordinance  
 10 that this suit challenges. They held regular meetings over several years with community members  
 11 concerned about health impacts from the coal and petcoke dust emitted from the Terminal. Berbeco  
 12 Decl. ¶ 8. At these meetings, community members expressed their concerns about coal and petcoke  
 13 dust, and they discussed how to advocate for the phasing out of coal and petcoke storage and  
 14 handling at the Terminal. *See* Berbeco Decl. ¶ 8. Proposed Intervenors and their members have  
 15 advocated for the ban of storage and handling of coal and petcoke in Richmond, including by  
 16 sending letters and giving testimony at City Council hearings as the Ordinance was considered.  
 17 Dortch Decl. ¶¶ 13-14; Atid Decl. ¶ 14; Berbeco Decl. ¶¶ 6-12; Choksi-Chugh Decl. ¶¶ 13-15.  
 18 Proposed Intervenors even helped collect coal and petcoke samples from areas near the Terminal to  
 19 show the need for the Ordinance. Berbeco Decl. ¶¶ 13-17; Dortch Decl. ¶8; Atid Decl. ¶ 9. As both  
 20 champions and direct beneficiaries of the Ordinance, Proposed Intervenors have demonstrated a  
 21 protectable interest in this suit that challenges the Ordinance’s validity.

22 **c. Proposed Intervenors’ environmental concerns constitute a legally**  
 23 **protectable interest.**

24 Lastly, Proposed Intervenors’ concern for the environment constitutes an independent  
 25 protectable interest sufficient to support intervention. *See Citizens for Balanced Use*, 647 F.3d at 897  
 26 (“Applicants have a significant protectable interest in conserving and enjoying the wilderness  
 27 character of the Study Area . . . .”); *United States v. Carpenter*, 526 F.3d 1237, 1240 (9th Cir. 2008)  
 28 (“[I]ntervenors were entitled to intervene because they had the requisite interest in seeing that the



1 wilderness area be preserved for the use and enjoyment of their members.”); *see also WildEarth*  
2 *Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010) (stating it is “‘indisputable’ that  
3 a prospective intervenor’s environmental concern is a legally protectable interest”) (citation  
4 omitted).

5 Proposed Intervenors are environmental and public health advocacy organizations with  
6 specific, demonstrated, and longstanding interests in protecting and improving air quality in the City  
7 of Richmond, and in preserving the water quality of the San Francisco Bay. Berbeco Decl. ¶¶ 2-3, 5;  
8 Choksi-Chugh Decl. ¶¶ 6-7, 25-26. In addition, Proposed Intervenors have an interest in “conserving  
9 and enjoying” the environment surrounding the Terminal site. *Citizens for Balanced Use*, 647 F.3d  
10 at 897. Proposed Intervenors’ members recreate in and enjoy that surrounding environment. Berbeco  
11 Decl. ¶¶ 2, 7; Choksi-Chugh Decl. ¶¶ 8-9, 20-22; Dortch Decl. ¶11; Parker Decl. ¶¶ 15-16, 23-25,  
12 27. Their use and enjoyment of this area will be harmed if the Ordinance is invalidated and coal and  
13 petcoke continue to be stored and handled in Richmond. Berbeco Decl. ¶ 7; Choksi-Chugh Decl. ¶¶  
14 20-22; Parker Decl. ¶¶ 23-27.

15 **3. The disposition of this case would impair Proposed Intervenors’ ability to**  
16 **protect their interests.**

17 Rule 24(a) requires intervenors to show that “disposing of the action may as a practical  
18 matter impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a)(2). If a  
19 proposed intervenor “would be substantially affected in a practical sense by the determination made  
20 in an action, he should, as a general rule, be entitled to intervene.” *Sw. Ctr. for Biological Diversity*,  
21 268 F.3d at 822 (quoting Fed. R. Civ. P. 24 advisory committee’s notes). This inquiry “presents a  
22 minimal burden,” *WildEarth Guardians*, 604 F.3d at 1199, and a determination of impairment tends  
23 to follow once intervenors have satisfied the interest test’s inquiry into whether the applicant “will  
24 suffer a practical impairment of its interests as a result of the pending litigation.” *California ex rel.*  
25 *Lockyer*, 450 F.3d at 441-442 (“Having found that appellants have a significant protectable interest,  
26 we have little difficulty concluding that the disposition of this case may, as a practical matter, affect  
27 it.”).

1 As described above, an adverse decision in this case would impair Proposed Intervenors’  
2 ability to protect their interests, in particular, the health of their own members as well as public  
3 health generally in Richmond. Consequently, Proposed Intervenors have satisfied this third  
4 requirement for intervention as of right.

5 **4. Proposed Intervenors’ interests are not adequately represented by**  
6 **existing parties.**

7 Proposed Intervenors should be granted intervention as of right because their interests  
8 diverge from the City’s such that the City may not adequately represent their interests and they will  
9 provide necessary elements to the litigation that the City will not. The three factors a court must  
10 consider in determining whether a proposed intervenor’s interests are adequately represented by  
11 existing parties are: “(1) whether the interest of a present party is such that it will undoubtedly make  
12 all of a proposed intervenor’s arguments; (2) whether the present party is capable and willing to  
13 make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to  
14 the proceeding that other parties would neglect.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir.  
15 2003). “The burden on proposed intervenors in showing inadequate representation is minimal, and  
16 would be satisfied if they could demonstrate that representation of their interests ‘*may be*’  
17 inadequate.” *Id.* (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)  
18 (emphasis added)); *see also Citizens for Balanced Use*, 647 F.3d at 900 (“intervention of right does  
19 not require an absolute certainty that ... existing parties will not adequately represent” a proposed  
20 intervenor’s interests).

21 While some courts apply a rebuttable presumption of adequate representation when a  
22 proposed intervenor and a party have the same ultimate objective, or when the government is acting  
23 on behalf of its constituency, a “compelling showing” to the contrary rebuts the presumption.  
24 *Citizens for Balanced Use*, 647 F.3d at 898. Moreover, even when that presumption arises, the Ninth  
25 Circuit has “emphasize[d] that the burden of showing inadequacy of representation is generally  
26 minimal . . . .” *Prete v. Bradbury*, 438 F.3d 949, 959 (9th Cir. 2006). Ultimately, “[t]he most  
27 important factor in assessing the adequacy of representation is how the interest compares with the  
28

1 interests of existing parties.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation marks  
2 omitted).

3 **a. The City’s interests diverge from those of Proposed Intervenors**  
4 **such that the City may not make all of Proposed Intervenors’**  
5 **arguments.**

6 Proposed Intervenors’ interests diverge from the City’s in significant ways such that the City  
7 not only may not, but cannot, adequately represent Proposed Intervenors’ interests. Because of the  
8 City’s divergent interests, Proposed Intervenors easily meet their minimal burden to show that the  
9 City may not “undoubtedly make all of a proposed intervenor’s arguments” or may not be “capable  
10 and willing to make such arguments.” *See Arakaki*, 324 F.3d at 1086.

11 **(1) Proposed Intervenors’ interests are narrower and more**  
12 **focused than the City’s interests.**

13 The first significant way in which Proposed Intervenors’ interests diverge from the City’s  
14 interests is that Proposed Intervenors’ interests are narrow and focused specifically on public health  
15 and environmental impacts. In contrast, the City must necessarily balance a much wider range of  
16 interests in its decision making. That balancing could readily influence and ultimately limit its  
17 defense of the Ordinance. For example, the City must represent all of its constituents and in doing so  
18 it inevitably pursues multiples goals. It must encourage economic growth, manage the City’s  
19 finances, develop housing, maintain infrastructure, implement benefit programs, and attend to a host  
20 of other goals unrelated to public health. The City’s obligations to balance and accommodate all of  
21 its competing interests prevent the City from solely focusing on the public health impacts of the  
22 Ordinance. Consequently, the City cannot adequately represent Proposed Intervenors’ narrow,  
23 particularized interests, and could easily compromise them.

24 Courts have found that more focused interests of this type are sufficient to make a  
25 “compelling showing” of inadequate representation and to defeat any presumption of adequate  
26 representation. *Arakaki*, 324 F.3d at 1087 (citing Ninth Circuit precedent that “permit[s] intervention  
27 on the government’s side [when] the intervenors’ interests are narrower than that of the government  
28 and therefore may not be adequately represented”). The presumption of adequate representation is  
overcome when a government entity “is required to represent a broader view than the more narrow,

1 parochial interests” of the proposed intervenor. *Forest Conservation Council v. U.S. Forest Serv.*, 66  
2 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc’y*, 630 F.3d 1173;  
3 *see also Sw. Ctr. for Biological Diversity*, 268 F.3d at 823-24 (narrower interests of intervening  
4 developers defeated presumption of adequate representation by government defendants).

5 In *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution*  
6 *District*, proposed intervenors argued that because their interests lay solely in the health of their  
7 members, the government, with its broader interests, may not adequately represent proposed  
8 intervenors’ interests. No. 1:07cv0820 LJO DLB, 2007 WL 2757995, at \*5 (E.D. Cal. Sept. 21,  
9 2007). The court agreed and explained that “[w]hile Proposed Intervenors and the District share a  
10 general interest in public health, the District has a much broader interest in balancing the need for  
11 regulations with economic considerations” such that “it is not likely that the District will  
12 ‘undoubtedly make all the intervener’s arguments.’” *Id.* The situation here is similar, and this Court  
13 should reach the same conclusion.

14 Proposed intervenors are not required to anticipate and identify specific differences in  
15 arguments and strategy in advance. “It is sufficient for [proposed intervenors] to show that, because  
16 of the difference in interests, it is likely that [an existing party] will not advance the same arguments  
17 as [proposed intervenors].” *Sw. Ctr. for Biological Diversity*, 268 F.3d at 824; *but see Oakland Bulk*  
18 *& Oversized Terminal, LLC v. City of Oakland*, Case Nos. 18-16105, 18-16141, 2020 WL 2703707,  
19 at \*13 (May 26, 2020) (a proposed intervenor must provide some evidence that a government  
20 entity’s “broader interest would lead it to stake out an undesirable legal position.”). Here, it is likely  
21 that the City will not make all of Proposed Intervenors’ arguments not only because their interests  
22 differ, but also because the City currently may not even be able to pursue all of its own priorities  
23 right now, much less those of Proposed Intervenors.

24 While the City is always under demands to protect a broad range of interests, it currently  
25 faces exceptional challenges that may force it to choose other priorities over defending the  
26 Ordinance as fiercely as Proposed Intervenors’ interests require. Due to the current COVID-19  
27 pandemic, the City is facing not only a public health crisis, but a major budget deficit. *See Mike*  
28 *Aldax, Richmond Council Identifies Budget Cuts for Next Fiscal Year*, *Richmond Standard* (May 13,

2020), <https://richmondstandard.com/richmond/2020/05/13/richmond-council-identifies-budget-cuts-for-next-fiscal-year/>; Mayor Tom Butt, *Budget Update from May 12 City Council Meeting* (May 13, 2020), <http://www.tombutt.com/forum/2020/20-5-13.html>. The Ninth Circuit has acknowledged that evidence a government is facing budget constraints may be enough to overcome the presumption of adequate representation. *Prete*, 438 F.3d at 958 n.10. The City's current budget challenges are likely to affect this litigation as, even before the financial impacts of COVID-19 set in, Richmond Mayor Tom Butt expressed concerns about the City's budget and its ability to defend this lawsuit. *See Annie Sciacca, Richmond Slammed with Multiple Federal, State Lawsuits Over Ban on Coal and Petcoke*, East Bay Times (March 13, 2020), <https://www.eastbaytimes.com/2020/03/13/richmond-slammed-with-multiple-federal-state-lawsuits-over-ban-on-coal-and-petcoke/>.

Furthermore, the City's budget shortfalls may be particularly detrimental here where the City is up against the well-funded coal and petcoke and related industries. Plaintiff in this litigation has overwhelming resources at its disposal to challenge this Ordinance. In addition to the Plaintiff that filed this case, two other plaintiff groups filed related litigation challenging the Ordinance. Facing an army of plaintiffs' attorneys, the City is left on its own to defend the multiple challenges in all of these cases at a time when the consequences of COVID-19 have just begun to greatly stress municipal finances. The City acted in the public interest when it passed the Ordinance to protect its citizens from the harms of coal and petcoke dust, but this action offers no guarantee that, under present circumstances, it can or will fully represent Proposed Intervenors and community members in a way that effectively responds to the massive industry representation assembled by the numerous plaintiffs. The City's budget challenges are likely to cause the City's priorities to further differ from those of Proposed Intervenors. Accordingly, Proposed Intervenors have made the requisite showing that the City may not adequately represent their interests.

**(2) Proposed Intervenors' interests relate directly to their own health and are thus more personal than the City's interests.**

The second significant way in which Proposed Intervenors' interests diverge from the City's interests is that Proposed Intervenors and their members have a significant and deeply personal stake

1 in upholding the Ordinance. Proposed Intervenors’ members and community members live, work,  
2 and recreate near the Terminal and, as a result, are regularly exposed to coal and petcoke dust.  
3 Exposure to any level of coal and petcoke dust can cause serious health impacts including  
4 respiratory illnesses, cancer, and even death. Because this litigation will determine whether coal and  
5 petcoke storage and handling in Richmond are phased out, its outcome will directly impact the health  
6 of Proposed Intervenors’ members and other community members. While the health of community  
7 members may be a key consideration for the City as well, the intensity of the health interests held by  
8 the City differ markedly from those of Proposed Intervenors. It is the physical health of these  
9 individual members—not that of the City—that coal and petcoke dust impact and put at risk. Thus,  
10 the City does not have the same deeply held personal health interests in the outcome of this litigation  
11 as community members themselves do.

12         At least one court has found that this type of personal health interest in the outcome of  
13 litigation is enough to overcome the presumption that a government entity defending an ordinance  
14 will adequately represent the interests of proposed intervenors. In *Syngenta Seeds, Inc. v. Cty. of*  
15 *Kauai*, the court granted intervention to community and public interest groups with personal health  
16 interests in defending an ordinance that required disclosures related to the application of restricted-  
17 use pesticides. No. Civ. 14-00014BMK, 2014 WL 1631830 (D. Haw. Apr. 23, 2014). In that case,  
18 the proposed intervenors lived and worked in close proximity to plaintiffs’ agricultural operations  
19 and argued that the challenged ordinance would eliminate or decrease their exposure to harmful  
20 restricted-use pesticides. *Id.* at \*4. The court acknowledged that proposed intervenors were directly  
21 affected by the activities of plaintiffs that the ordinance would regulate. *Id.* at \*7. In finding that the  
22 county would not adequately represent the proposed intervenors’ interests, the court noted that the  
23 county’s public health concerns were tempered by the need to balance regulation with economic and  
24 political considerations. *Id.* at \*8. The court found that proposed intervenors’ “interests in upholding  
25 the law are decidedly more palpable than the County’s generalized interest.” *Id.* at \*7. This case is  
26 similar in all relevant aspects, and this Court should reach the same conclusion here.

27         Additionally, the Ninth Circuit has found that a government entity may not be able to  
28 adequately represent a proposed intervenor who has a more personal stake in the outcome of the

1 litigation than the government. In *Californians for Safe and Competitive Dump Truck*  
 2 *Transportation v. Mendonca*, the Ninth Circuit considered whether the state adequately represented  
 3 the interests of union truck drivers in a case challenging California’s Prevailing Wage Law, which  
 4 mandated increased wages for truck drivers. 152 F.3d 1184 (9th Cir. 1998). The court held that, even  
 5 though the state defended the law, the union truck drivers overcame the presumption of adequate  
 6 representation by the government because their interests were “potentially more narrow and  
 7 parochial than the interests of the public at large . . . .” *Id.* at 1190.

8 **(3) Proposed Intervenors’ interests in protecting air and water**  
 9 **are long-standing and mission-driven.**

10 The third significant way in which Proposed Intervenors’ interests diverge from the City’s  
 11 interests is that Proposed Intervenors are organizations dedicated to protecting air and water quality.  
 12 Proposed Intervenors have worked to protect air and water quality for decades. Because of Proposed  
 13 Intervenors’ backgrounds and missions, their interest in protecting public health from pollution  
 14 harms greatly exceeds the City’s interest. Proposed Intervenors more rigorously and  
 15 comprehensively seek and enforce air and water quality standards. *See* Berbeco Decl. ¶¶ 2-3;  
 16 Choksi-Chugh Decl. ¶¶ 23-28. In many instances the City has taken a weaker stance than Proposed  
 17 Intervenors with regard to pollution and its impacts on public health. Indeed, in at least one case,  
 18 Proposed Intervenor Baykeeper was forced to sue the City to protect the public from harms caused  
 19 by spilled sewage and broken or outdated sewer lines. Choksi-Chugh Decl. ¶¶ 23, 27.

20 **b. Because of their uniquely situated position, Proposed Intervenors**  
 21 **will provide necessary elements the City cannot.**

22 Finally, the City cannot adequately represent Proposed Intervenors because Proposed  
 23 Intervenors will provide “necessary elements to the proceeding that other parties would neglect.”  
 24 *Arakaki*, 324 F.3d at 1086. This factor also weighs heavily in favor of permitting intervention in this  
 25 case. Proposed Intervenors will bring the voices of community members, those who are most  
 26 directly impacted from the harms of fugitive coal and petcoke dust, something that would be missing  
 27 from this litigation without their participation. Proposed Intervenors met with and worked alongside  
 28 community members in Richmond to encourage the City to protect them from the harms of coal and  
 petcoke dust and to support the Ordinance, and consequently have deep familiarity with the concerns

1 of those community members. Berbeco Decl. ¶¶ 5-6, 8; Choksi-Chugh Decl. ¶¶ 13, 15. Without  
 2 Proposed Intervenors' participation in this litigation, the Court will only hear from coal and petcoke  
 3 industry interests and municipal interests. Proposed Intervenors' participation is necessary to ensure  
 4 that the interests of those who live and work in Richmond and are most impacted by the Ordinance  
 5 are adequately represented.

6 All of the reasons discussed constitute a compelling showing that the City may not  
 7 adequately represent Proposed Intervenors' interests, and Proposed Intervenors have overcome any  
 8 presumption to the contrary. Accordingly, each of the four requirements under Rule 24(a)(2) is  
 9 satisfied and the Court should grant Proposed Intervenors intervention as of right.

10 **B. Alternatively, the Court should grant permissive intervention.**

11 Proposed Intervenors also satisfy the requirements for permissive intervention under Rule  
 12 24(b). Permissive intervention is appropriate when (1) a movant files a timely motion; (2) the  
 13 prospective intervenor has a claim or defense that shares a common question of law or fact with the  
 14 main action; and (3) intervention will not unduly delay or prejudice existing parties. Fed. R. Civ. P.  
 15 24(b)(1), (b)(3).<sup>2</sup>

16 Proposed Intervenors easily meet the three-part test for intervention. As discussed above, this  
 17 motion is timely. Additionally, Proposed Intervenors intend to defend the Ordinance on each of the  
 18 claims raised in Plaintiff's complaint, and thus its defenses share common questions of law with the  
 19 main action. *See Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110–11 (9th Cir. 2002)  
 20 (conservation groups met test for permissive intervention where they asserted defenses “directly  
 21 responsive” to plaintiffs' complaint), *abrogated on other grounds by Wilderness Soc'y*, 630 F.3d  
 22 1179. Furthermore, Proposed Intervenors' intervention will not cause delay or prejudice the existing  
 23 parties. Proposed Intervenors do not intend to duplicate the City's efforts. For example, Proposed  
 24 Intervenors' motion to dismiss only raises arguments which have not been addressed by the City or  
 25

26  
 27  
 28 <sup>2</sup> Permissive intervention also requires independent grounds for jurisdiction. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). In a federal question case like this one where Proposed Intervenors raise no new claims, this requirement is met. *See id.* at 844.



1 for which Intervenor provide a different perspective.<sup>3</sup> Additionally, Proposed Intervenor will work  
2 within the confines of the schedule set by the Court and the parties and not delay the resolution of  
3 any matters.

4 Finally, there are significant equitable reasons for the Court to exercise its discretion to allow  
5 permissive intervention here. An appropriate inquiry for a court considering permissive intervention  
6 is “whether parties seeking intervention will significantly contribute to full development of the  
7 underlying factual issues in the suit and to the just and equitable adjudication of the legal questions  
8 presented.” *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977). As discussed  
9 above, the outcome of this litigation will directly impact the health of Proposed Intervenor’s  
10 members. Proposed Intervenor and their member have been fighting for years to protect themselves  
11 and other community members from the harms of coal and petcoke emissions from the Terminal,  
12 including by advocating for and supporting the Ordinance. Now that the Ordinance they championed  
13 is being challenged, they deserve to be able to defend it. Without Proposed Intervenor’s participation  
14 in this litigation, community members, the vast majority of which lack the resources to intervene on  
15 their own behalf, will not receive their day in court and will be unable to defend the Ordinance and  
16 its important protective measures that they fought so hard and for many years to get. They will not  
17 be able to protect their own health. Accordingly, Proposed Intervenor submit the equities and access  
18 to justice issues here at a minimum should allow those directly impacted by this Ordinance from a  
19 health standpoint to participate in this litigation.

20 Proposed Intervenor also should be allowed to participate in the interests of equity to correct  
21 the highly imbalanced resource and power dynamics currently present in this litigation. As discussed  
22 above, Plaintiff in this case and the plaintiffs in two related cases challenging the Ordinance—coal,  
23 petcoke, and related companies—have overwhelming resources and a large team of attorneys from  
24 three law firms to represent them. In contrast, without Proposed Intervenor’s participation, the City  
25 will be forced to defend the Ordinance on its own while facing a severe budget deficit that is likely  
26

27 <sup>3</sup> For example, with regard to Plaintiff’s Contracts Clause claim, Proposed Intervenor explain that  
28 Plaintiff cannot show that the Ordinance substantially impairs its contracts because the petcoke  
industry is heavily regulated. This is an argument the City does not discuss.

1 to get worse due to the consequences of COVID-19. Thus, not only will Proposed Intervenor bring  
2 the community voice and perspective to this litigation, they will also help ensure that adequate  
3 resources are available to defend the Ordinance—an assurance unquestionably in the interest of  
4 justice.

5 In balancing the equities, Proposed Intervenor submit that, at a minimum, they should be  
6 able to join this litigation as permissive intervenors to ensure their interests are adequately  
7 represented.

8 **V. CONCLUSION**

9 For the foregoing reasons, Proposed Intervenor Sierra Club and San Francisco Baykeeper  
10 have satisfied the requirements for intervention as a matter of right under Rule 24(a), and  
11 alternatively, permissive intervention under Rule 24(b). Proposed Intervenor therefore respectfully  
12 request that the Court grant this motion to intervene.

13 Proposed Intervenor also request that if intervention is granted, the Court accept Proposed  
14 Intervenor’s concurrently lodged Rule 12(b)(6) Motion to Dismiss.

15 DATED: May 28, 2020

Respectfully submitted,

/s/ Anna K. Stimmel

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