

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ZACHARY R. CHERTOK, et al.,

Plaintiffs,

v.

CITY OF MEDFORD, et al.

Defendants.

C.A. No.: 1:26-cv-10589-GAO

**PROPOSED
INTERVENORS' REPLY
IN SUPPORT OF
MOTION TO
INTERVENE**

NOW COME Proposed Intervenors Clare Sheridan, Miranda Briseno, Chadi Salamoun, Benjamin Stein, Phoebe Eckart-Lee, Cassandra Fox, Michael Prentky, Janet Sass Collins, Dwight Schaffer Collins, Noah Brewer-Wallen, Emily Nola Sundquist, and Sam Collins (collectively, "Proposed Intervenors"), and respectfully submit this Reply in further support of their Motion for Leave to Intervene pursuant to [Federal Rule of Civil Procedure 24](#). For the reasons set forth herein, the City Defendants' Opposition does not defeat intervention as of right or permissive intervention and instead further demonstrates that Proposed Intervenors' interests may not be adequately represented by the existing parties.

MEMORANDUM OF REASONS

I. ARGUMENT

A. The City's Opposition Confirms That Proposed Intervenors' Interests Are Not Adequately Represented

The City’s Opposition confirms Proposed Intervenor’s reason for intervening—that their interests are not adequately represented by City Defendants. The City expressly acknowledges that its litigation approach is informed by concerns regarding “financial and legal exposure,” “executive authority,” “legal and financial positions,” and “municipal operations,” all of which reflect broader governmental and institutional interests distinct from Proposed Intervenor’s narrower interest in ensuring the enforcement of the Ordinance. *See* City Opp. at 3–5. In fact, the City has gone so far as to decline to oppose Plaintiffs’ motion for a preliminary injunction, an astonishing omission that reveals its intention not to pose a meaningful obstacle to Plaintiffs’ aim of getting the Ordinance entirely invalidated. In short, the City’s Opposition (or perhaps better stated, its lack thereof) confirms that the parties’ interests are not truly aligned and that the City is failing to adhere to its obligation to faithfully execute the duly enacted laws. That divergence is sufficient under Rule 24(a)(2), which requires only showing that existing representation “may be” inadequate. Thus, Proposed Intervenor has made the requisite “minimal showing” that existing representation “likely will prove inadequate” and identified a “tangible basis” for that concern. *Victim Rights Law Ctr. v. Rosenfelt*, [988 F.3d 556, 561–62 \(1st Cir. 2021\)](#).

The City’s reliance on *Victim Rights Law Ctr. v. Rosenfelt*, [988 F.3d 556 \(1st Cir. 2021\)](#), and *KG Urban Enterprises, LLC v. Patrick*, [293 F.R.D. 42 \(D. Mass. 2013\)](#), is misplaced. In both cases, the courts denied intervention because the governmental defendants were already actively and fully defending the challenged laws, while the proposed intervenors merely sought to advance additional or differing legal arguments. *See Rosenfelt*, [988 F.3d at 561–62](#) (proposed intervenors sought to advance arguments “not in conflict with the government’s defenses”); *KG Urban*, [293 F.R.D. at 48](#) (Commonwealth had “defended the [challenged statute] in its entirety” and intended

“to continue to do so”). Both courts emphasized that the governmental defendants’ litigation objectives remained aligned with those of the proposed intervenors.

Here, in contrast to *Rosenfelt* and *KG Urban*, Proposed Intervenors seek intervention because the City has expressly declined to enforce the Ordinance during this litigation. Its refusal to even oppose preliminary injunctive relief—a highly unusual omission—is demonstrative of the fact that it does not intend to defend the Ordinance in any meaningful way, as do its statements that defending the Ordinance is not worth the expenditure of municipal resources. Proposed Intervenors therefore do not seek to duplicate an existing defense, but rather to ensure that the Ordinance receives a meaningful defense at all. That is precisely the circumstance in which intervention is appropriate. *See Berger v. N.C. State Conf. of the NAACP*, [597 U.S. 179, 198–99](#) (2022) (holding intervention proper where proposed intervenors sought to ensure a challenged law received a “vigorous[]” defense after governmental defendants declined to fully oppose preliminary injunctive relief and prioritized other institutional concerns); *cf. Karcher v. May*, [484 U.S. 72, 82](#) (1987) (recognizing intervention by legislative actors where “no other party defendant was willing to defend the statute” and the intervenors “sought to perform a task which normally falls to the executive branch, but which, in this case, the executive branch refused to perform”). As discussed above and extensively in other briefs in this case, *see* ECF Nos. 9, 10, 30, Proposed Intervenors are intervening precisely because they reasonably concluded that those interests otherwise would not be adequately protected in this litigation.

The City’s characterization of Proposed Intervenors’ concerns as “mere speculation,” City Opp. at 3, is contradicted by the City’s own litigation posture, including its representation that it “does not oppose the issuance of a preliminary injunction” and that it “will not take any active steps to implement the Ordinance while the matter is pending.” City Response to Pls.’ Mot. for

Preliminary Injunction at 1; Affidavit of Mayor Breanna Lungo-Koehn ¶ 2. Those concerns are especially significant in the preliminary injunction context because Rule 65 injunctions carry binding legal consequences for municipal officials, employees, and attorneys charged with implementation and compliance. *See* [Fed. R. Civ. P. 65\(d\)\(2\)](#). Multiple City Councilors have likewise declared, on the record and in public discussion at City Council meetings, that they believe the Ordinance will not be meaningfully defended absent intervention. Those statements are significant because they reflect firsthand knowledge of internal disagreement regarding the City's litigation posture and whether the Ordinance will receive a full adversarial defense. These are concrete facts reflected in the record—they are not conjecture, and underscore that the Ordinance will not receive a genuinely adversarial and complete defense absent Proposed Intervenor's involvement. *Cf.* Brief of Amici Curiae Former Government Officials & Public Interest Organizations at 2–5, *Trump v. IRS*, No. 26-cv-20609 (S.D. Fla. Feb. 5, 2026) (discussing concerns arising where governmental actors control litigation posture and affected interests may not receive full adversarial representation). Given the possible statewide implications of Plaintiffs' claims, the lack of a truly adversarial defense further underscores the need for intervention.

Nor does the City's assertion that it is “the exclusive entity to litigate challenges to its ordinances,” City Opp. at 2, resolve the Rule 24 inquiry. Rule 24(a)(2) expressly contemplates intervention where governmental defendants' institutional interests may diverge from those of proposed intervenors. The relevant question is not whether the City has formally appeared in this litigation, but whether Proposed Intervenor's interests may be inadequately represented in light of the City's actual litigation posture. Under those circumstances, intervention is entirely consistent with Rule 24 and First Circuit precedent.

The Rule exists precisely to ensure that affected interests receive meaningful representation where existing governmental defendants' institutional objectives may materially diverge from the narrower interest in fully defending and enforcing the challenged law. *See Berger*, [597 U.S. at 198](#) (recognizing that legislative leaders could intervene because they “seek to give voice to a different perspective” regarding the defense of challenged legislation). That is the circumstance presented here.

B. The City’s “Generalized Interest” Argument Does Not Defeat Intervention

The City’s contention that Proposed Intervenors lack a sufficiently protectable interest because support for the Ordinance is shared by other Medford residents is unavailing. Proposed Intervenors seek to defend the very Ordinance that Plaintiffs ask this Court to enjoin and invalidate. Proposed Intervenors are a cohort of more than ten Medford residents and municipal taxpayers who actively participated in the advocacy, and enactment of the Ordinance and who seek to preserve and enforce the specific protections and municipal commitments it confers. They therefore possess a direct and legally protectable interest in the Ordinance’s continued enforceability and implementation, including ensuring that municipal funds are managed in accordance with duly enacted law. This interest is further reified under Massachusetts’ own legislated right of action, the “Ten Taxpayers Law,” which expressly grants ten or more municipal resident taxpayers a right of action when a corresponding municipality is about to spend or raise monies in an unlawful manner. Mass. Gen. Laws c. 40 § 53.

The City’s reliance on *Alianza Americas v. DeSantis*, [2022 WL 17094688](#) (D. Mass. Nov. 21, 2022), and *Daggett v. Comm’n on Governmental Ethics & Election Practices*, [172 F.3d 104](#) (1st Cir. [1999](#)), is misplaced. Those cases distinguish between generalized ideological or taxpayer

grievances and concrete interests directly tied to the subject matter of the litigation. In *Alianza*, the proposed intervenor asserted only a generalized taxpayer objection and expressly conceded that his interests were “not distinct from that of every other citizen or taxpayer.” [2022 WL 17094688](#), at *2. Likewise, *Daggett* cautioned against intervention by individuals whose interests are “infinitely diluted” or “rest[] solely on ideological grounds,” but ultimately recognized intervention where proposed intervenors possessed concrete interests directly connected to the challenged law and its operation. [172 F.3d at 110](#).

Daggett’s analysis favors granting Proposed Intervenors’ motions. Their interests arise directly from the challenged Ordinance, their status as municipal taxpayers, their explicit statutory interests under M.G.L. c. 40 § 53, and their substantial participation in the legislative process culminating in the Ordinance’s enactment. The fact that other Medford residents may share similar ultimate aims does not render Proposed Intervenors’ interests abstract or indistinct, nor does it render them mere taxpayer grievances. Indeed, the existence of substantial resident participation in the Ordinance’s enactment underscores—rather than defeats—the importance of ensuring that those directly affected interests are adequately represented in litigation threatening to nullify the Ordinance altogether. In addition, there is no question that the M.G.L. c. 40 § 53 grants the Proposed Intervenors a direct and particularized interest in the City’s compliance with the Ordinance and, correspondingly, the lawfulness of the Ordinance.

Moreover, the City’s argument ignores the central basis for intervention here: not merely support for the Ordinance, but the substantial risk that the Ordinance will not be adequately defended by the existing Defendants. At the same time, the City’s decision not to oppose preliminary injunctive relief and its stated refusal to implement the Ordinance during the pendency of this litigation directly implicate Proposed Intervenors’ statutorily recognized interests under

M.G.L. c. 40, § 53. Proposed Intervenorors therefore possess a distinct and direct interest in ensuring that municipal funds are administered in accordance with duly enacted law and that the City does not decline compliance with the Ordinance absent meaningful adversarial review.

C. Permissive Intervention Remains Appropriate

At minimum, the Court should permit intervention under Rule 24(b). Proposed Intervenorors plainly satisfy Rule 24(b)'s requirement that their defenses share common questions of law and fact with the underlying action because the legality, enforceability, and implementation of the Ordinance lie at the center of both Plaintiffs' claims and Proposed Intervenorors' defenses.

As discussed extensively in earlier briefing, *see* ECF Nos. 9, 10, 30, permitting intervention will not cause undue delay or prejudice. This litigation remains at an early stage, no discovery has occurred, and intervention will neither alter the core legal issues nor materially expand the scope of the proceedings. Proposed Intervenorors moved promptly after their interests became concretely imperiled, and their participation will assist the Court by ensuring that all arguments supporting the Ordinance's validity and enforceability are fully presented.

Defendants' reliance on *T-Mobile Northeast LLC v. Town of Barnstable*, 969 F.3d 33 (1st Cir. 2020), is misplaced. There, the First Circuit affirmed denial of intervention because the municipality had mounted a "vigorous, no-holds-barred defense" of the challenged governmental action, the proposed intervenors identified "not even a single shortcoming" in the municipality's litigation posture, and the case involved a statutory mandate for expedited proceedings. *Id.* at 39–42. By contrast, Proposed Intervenorors here do not rely on "speculation and surmise" regarding the adequacy of the City's representation. *Id.* at 40. Rather, the City has expressly declined to oppose preliminary injunctive relief, stated that it "will not take any active steps to implement the Ordinance while this matter is pending," and adopted a litigation posture focused on limiting

institutional exposure and preserving municipal resources rather than fully defending the Ordinance on the merits. City Response to Pls.’ Mot. for Preliminary Injunction at 1; Affidavit of Mayor Breanna Lungo-Koehn ¶ 2; City Opp. at 3–5. Unlike the intervenors in *T-Mobile*, Proposed Intervenors have identified concrete deficiencies in the existing defense and articulated precisely what they seek to contribute: a full and meaningful defense of the Ordinance’s enforceability and implementation. Indeed, *T-Mobile* reinforces Proposed Intervenors’ position because the First Circuit premised its holding on the municipality’s vigorous and comprehensive defense of the challenged action—precisely the circumstance absent here. Proposed Intervenors therefore seek not to duplicate an existing vigorous defense, but to ensure that the Ordinance receives a full and meaningful defense on the merits. Under these circumstances, permissive intervention is appropriate.

CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully request that the Court grant their Motion to Intervene pursuant to Rule 24(a). In the alternative, Proposed Intervenors respectfully request that the Court permit intervention under Rule 24(b).

Dated: May 19, 2026

Respectfully submitted,

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