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8 *Department of Housing and Community*
Development
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12
13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA; CALIFORNIA**
15 **DEPARTMENT OF HOUSING AND**
COMMUNITY DEVELOPMENT,

16 Petitioner and Plaintiff,

17 v.

18 **CITY OF LA HABRA HEIGHTS; CITY**
19 **COUNCIL OF THE CITY OF LA HABRA**
20 **HEIGHTS; AND DOES 1-50,**

21 Respondent and Defendant,
22

Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY RELIEF**

23 **INTRODUCTION**

24 1. Californians continue to suffer under a housing affordability crisis. The Legislature has
25 found that “[t]he lack of housing . . . is a critical problem that threatens the economic,
26 environmental, and social quality of life in California.” (Gov. Code, § 65589.5, subd. (a)(1)(A),
27 (B).) This crisis is “hurting millions of Californians, robbing future generations of the chance to
28

1 call California home, stifling economic opportunities for workers and businesses, worsening
2 poverty and homelessness, and undermining the state’s environmental and climate objectives.” (*Id.*,
3 subd. (a)(2)(A).)

4 2. A key contributor to this crisis is the failure of local governments to plan for the
5 necessary housing supply. To counteract this, the Legislature requires local governments to include
6 housing elements in their general plans. A housing element must include, among other things, an
7 assessment of housing needs, an inventory of resources and constraints relevant to meeting those
8 needs, and a program to implement the policies, goals, and objectives of the housing element.
9 Respondent/Defendant the City of La Habra Heights has not complied with this requirement.

10 3. Local governments that do not prepare a housing element substantially in compliance
11 with state law, thereby failing to plan for an adequate supply of housing at all income levels, become
12 subject to various legal consequences. For example, a local agency that fails to adopt a substantially
13 compliant housing element becomes subject to the so-called “Builder’s Remedy” provision of the
14 Housing Accountability Act. (Gov. Code, § 65589.5) A local agency without a substantially
15 compliant housing element may not deny, or apply conditions that make infeasible, a housing
16 development project for very low-, low-, or moderate-income households on the basis of
17 inconsistency with a zoning ordinance and land use designation in any general plan element. (Gov.
18 Code, § 65589.5, subd. (d)(5).) In addition, a local government that fails to adopt a compliant
19 housing element by the statutory deadline is subject to legal challenge pursuant to Article 14 of the
20 Housing Element Law. (See Gov. Code. § 65750 et seq.) Article 14 provides for, among other
21 things, temporary relief in the form of a revocation of permitting authority until the legal challenge
22 is concluded. (Gov. Code, § 65757.)

23 4. Petitioners/Plaintiffs the California Department of Housing and Community
24 Development (“HCD”) and the People of California ex rel. Rob Bonta (collectively, “Petitioners”)
25 bring this action against the City of La Habra Heights and the City Council of the City of La Habra
26 Heights (collectively, the “City”) to remedy its violations of state law. Petitioners’ request that the
27 Court issue a writ ordering the City to bring its housing element into compliance with State law
28 and issue a declaration that the City has failed to fulfill its planning obligations.

1 **PARTIES**

2 5. The Attorney General, as the chief law enforcement officer of the State of California,
3 brings this action under his broad independent powers to enforce state laws. (Cal. Const., Art. V,
4 section 13; Gov. Code, § 65585, subd. (j).)

5 6. HCD is a public agency of the State of California. (Gov. Code, § 12804.) Among other
6 duties, HCD is responsible for developing housing policy and building codes, for regulating
7 manufactured homes and mobile home parks, and for enforcing state housing laws, including the
8 Housing Element Law, the Housing Accountability Act, state ADU laws, and the Housing Crisis
9 Act in a manner that meaningfully and positively impacts the provision of housing in all
10 communities across the state.

11 7. The City of La Habra Heights is a municipal corporation formed and existing under the
12 laws of the State of California, of which it is a political subdivision.

13 8. The City Council of the City of La Habra Heights is the elected governing body of the
14 City of La Habra Heights. It is the legislative body charged under Government Code § 65300 with
15 responsibility for adopting a general plan, including a housing element, for the physical
16 development of the City of La Habra Heights.

17 9. Petitioners are unaware of the true names and capacities of respondents and defendants
18 DOES 1 through 50 (the “Doe Respondents”), who are therefore sued by fictitious names pursuant
19 to Code of Civil Procedure section 474. Petitioners allege on information and belief that each such
20 fictitiously-named Doe Respondent is responsible or liable in some manner for the events and
21 happenings referred to herein, and Petitioners will seek leave to amend this Petition and Complaint
22 to allege their true names and capacities after the same have been ascertained.

23 **VENUE AND JURISDICTION**

24 10. This Court has jurisdiction over this action pursuant to Code of Civil Procedure sections
25 187, 1060, and 1085.

26 11. Venue is proper in this Court because the City is located in Los Angeles County and
27 the violations of law alleged herein occurred in Los Angeles County.
28

1 12. This action is brought pursuant to Government Code section 65751 and is therefore
2 entitled to preference over all other civil actions before this court pursuant to Government Code
3 section 65752.

4 **BACKGROUND AND FACTUAL ALLEGATIONS**

5 **The Housing Crisis**

6 13. The Legislature has declared that “[t]he availability of housing is of vital statewide
7 importance, and the early attainment of decent housing and a suitable living environment for every
8 Californian . . . is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)

9 14. California has a crisis-level housing shortage that stems from the failure of local
10 governments to approve affordable housing to meet the needs of all Californians. For decades, the
11 Legislature has found that California has been suffering from “a severe shortage of affordable
12 housing, especially for persons and families of low and moderate income” and that “there is an
13 immediate need to encourage the development of new housing.” (*Ruegg & Ellsworth v. City of*
14 *Berkeley* (2021) 63 Cal.App.5th 277, 295, quoting Gov. Code, § 65913.)

15 15. Recently, the Legislature stated plainly that “California has a housing supply and
16 affordability crisis of historic proportions.” (Gov. Code, § 65589.5, subd. (a)(2)(A).) “The
17 consequences of failing to effectively and aggressively confront this crisis are hurting millions of
18 Californians, robbing future generations of the chance to call California home, stifling economic
19 opportunities for workers and businesses, worsening poverty and homelessness, and undermining
20 the state’s environmental and climate objectives.” (*Ibid.*)

21 **Housing Elements and the Planning Process**

22 16. California law requires that all local governments adequately plan to meet the housing
23 needs of everyone in the community, at all economic levels. To meet this requirement, every city
24 and county must adopt and periodically update a housing element as part of its general plan. (See
25 Gov. Code, §§ 65302, subd. (c), 65580, *et seq.*) The law mandating this adoption and periodic
26 update is known as the “Housing Element Law.” (Gov. Code, § 65580, *et seq.*) California’s
27 Housing Element Law requires local governments to adopt plans and regulatory systems that
28 provide opportunities for, and do not unduly constrain, housing development, especially for a

1 locality’s lower-income households and workforce. As a result, housing policy in California rests
2 largely on the effective implementation of the housing element contained in the local general plan.

3 17. The housing element is a roadmap for housing development in a given community.
4 The housing element must identify and analyze existing and projected housing needs, and must
5 include “a statement of goals, policies, quantified objectives, financial resources, and scheduled
6 programs for the preservation, improvement, and development of housing.” (Gov. Code, § 65583.)
7 The housing element must also “identify adequate sites for housing” and “make adequate provision
8 for the existing and projected needs of all economic segments of the community.” (*Ibid.*) Each
9 housing element is also subject to review by HCD, as discussed below.

10 18. A local jurisdiction’s housing element must be frequently updated to ensure compliance
11 with California’s Housing Element Law. (Gov. Code, § 65588.) Each eight-year update cycle is
12 known as a “planning period.” (See *id.*, subd. (f)(1).)

13 19. The process of updating a housing element begins with HCD’s determination of a
14 Regional Housing Need Allocation (“RHNA”) for the region for a given planning period. (Gov.
15 Code, § 65584, subd. (a)(1).) The RHNA sets goals for housing affordable to various income levels.
16 To arrive at the RHNA, HCD starts with demographic population information from the California
17 Department of Finance and uses a formula to calculate a figure for each region’s planning body,
18 known as a “council of governments” (COG). Each COG (in this case, the Southern California
19 Association of Governments) also uses its own demographic figures to calculate the regional
20 housing need. Each COG coordinates with HCD to arrive at a final figure, taking into account
21 factors not captured in the calculations. This final figure is the RHNA. (See Gov. Code,
22 § 65584.01.)

23 20. Once the RHNA is set, the COG is responsible for allocating the housing need among
24 all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each local
25 government must then prepare a housing element that identifies adequate sites to accommodate that
26 jurisdiction’s fair share of the RHNA at each income level. (Gov. Code, §§ 65583, 65583.2.) Sites
27 must be suitable for residential development and must be made available during the planning
28 period. (Gov. Code, § 65583.2, subd. (a).) If a sufficient quantity of adequate sites is not currently

1 available, the housing element must commit to identifying and rezoning additional sites within
2 three years from the date of adoption. (Gov. Code, §§ 65583, subd. (c)(1), 65583.2, subd. (h).) The
3 housing element must also accommodate any unmet portion of the RHNA from the prior planning
4 period. (Gov. Code, § 65584.09, subd. (a).)

5 21. Each housing element must also evaluate governmental constraints on the
6 development of housing for all income levels, and must show local efforts to remove governmental
7 constraints that impede the local government’s ability to meet its share of the RHNA. (Gov. Code,
8 § 65583, subd. (a)(5).)

9 22. Each housing element must include a program that promotes and affirmatively furthers
10 fair housing opportunities throughout the community for all persons, including an assessment of
11 fair housing in the local government’s jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)

12 23. Each local government must submit a draft housing element to HCD before adoption.
13 (Gov. Code, § 65585, subd. (b)(1).) HCD must review the draft element and issue findings as to
14 whether the draft substantially complies with Housing Element Law. (*Id.*, subds. (b)(3), (d).) Before
15 a local government can adopt the draft element, its legislative body must consider HCD’s findings.
16 (*Id.*, § 65585, subd. (e).) If HCD finds that the draft element does not substantially comply with
17 state law, the local government’s legislative body must either (1) change the draft element to
18 substantially comply with substantially comply with the law or (2) adopt the draft element without
19 changes but including written findings in its resolution of adoption explaining the reason the
20 legislative body believes that the draft element substantially complies with the law, despite HCD’s
21 findings. (*Id.*, § 65585, subd. (f).)

22 24. After adopting the final housing element, the local government must again submit the
23 element to HCD, and HCD must again review and report its findings to the local government. (*Id.*,
24 subds. (g), (h).)

25 25. Under Government Code section 65585, subdivisions (i) and (j), HCD has authority to
26 review any action or failure to act by a local government that it determines is inconsistent with an
27 adopted housing element or section 65583 of California’s Housing Element Law. This includes
28 failure to implement program actions included in the housing element. HCD may revoke housing

1 element compliance if the local government’s actions do not comply with state law. Section 65585
2 also authorizes HCD to notify the Office of the Attorney General of California that the local
3 jurisdiction is in violation of state law for noncompliance with, among other statutes, California’s
4 Housing Element Law.

5 26. Pursuant to Government Code section 65585, subdivision (i)(1)(A), HCD may take any
6 of the actions authorized by law after issuing written findings to the local government “as to
7 whether the action or failure to act substantially complies with [California’s Housing Element
8 Law],” and providing a reasonable time, no longer than 30 days, for the local government to
9 respond. (Gov. Code, § 65585, subd. (i)(1)(A).) Prior to an enforcement action brought by the
10 Attorney General’s Office, HCD must also offer the City the opportunity for two in-person or
11 telephone meetings to discuss the violation, and provide the City with written findings regarding
12 the violation. (Gov. Code, § 65585, subd. (k).) As stated below, HCD has satisfied this requirement
13 here.

14 27. A local government that fails to adopt a compliant housing element by the statutory
15 deadline is subject to legal challenge pursuant to Article 14 of the Housing Element Law. (Gov.
16 Code. § 65750 et seq.) Article 14 authorizes a court to issue various remedies, including ordering
17 a local government to adopt a compliant housing element within 120 days, ordering the suspension
18 of a local government’s permitting authority until it adopts a compliant housing element, and even
19 ordering a *temporary* suspension of a local government’s permitting authority until a housing
20 element challenge is concluded. (Gov. Code, §§ 65754, 65755, 65757.) In addition, localities that
21 do not have compliant housing elements are automatically subject to the Builder’s Remedy under
22 the Housing Accountability Act. (Gov. Code, § 65589.5.)

23 **The City of La Habra Heights Housing Element**

24 28. The statutory deadline for the City to adopt a substantially compliant Sixth Cycle
25 Housing Element was October 15, 2021.

26 29. The City submitted a draft housing element to HCD on March 15, 2022.

27
28

1 30. After review, on June 13, 2022, HCD issued a findings letter that the initial draft
2 housing element was insufficient to comply with the Housing Element Law. HCD offered the City
3 technical assistance and the opportunity to make revisions before it would issue its official findings.

4 31. On August 8, 2022, the City adopted the draft housing element without submitting any
5 further revisions to HCD for review.

6 32. On August 10, 2022, the City submitted its adopted housing element to HCD for review.

7 33. After review, on October 6, 2022, HCD issued a second findings letter to the City which
8 found the adopted housing element was not substantially compliant with the Housing Element Law,
9 and noting revisions were necessary.

10 34. On May 19, 2023, HCD issued a Letter of Inquiry to the City requesting a specific
11 timeline for (1) submitting an updated draft housing element and (2) obtaining compliance with the
12 Housing Element Law by no later than June 9, 2023.

13 35. On June 9, 2023, the City submitted an informal draft housing element to HCD for
14 review.

15 36. On September 19, 2023, HCD provided technical assistance to the City which
16 identified the deficiencies in the June 9, 2023 draft housing element.

17 37. After receipt of HCD's technical assistance, the City did not submit any further
18 revisions of the draft housing element to HCD for review.

19 38. On March 19, 2024, HCD issued a Notice of Violation ("NOV") to the City regarding
20 its noncompliance with the Housing Element Law. The NOV informed the City of the potential
21 penalties for noncompliance with the Housing Element Law, and also offered to provide the City
22 with technical assistance and one-on-one consultation services to assist it with meeting its
23 compliance obligations. HCD demanded a written response within 30 days and offered two
24 additional meetings to discuss the City's noncompliance.

25 39. After receipt of the NOV, HCD met with City representatives on several occasions to
26 discuss the City's violations of the Housing Element Law and its progress towards housing element
27 compliance.

28

1 40. Since June 9, 2023, HCD has not received any further revisions to the draft housing
2 element from the City.

3 41. To date, the City has not adopted a compliant Sixth Cycle Housing Element.

4 **FIRST CAUSE OF ACTION**

5 **Writ of Mandate (Code Civ. Proc., § 1085; Gov. Code §§ 65751, 65585)**

6 **[Against All Defendants]**

7 42. Petitioners incorporate by reference each and every allegation of the preceding
8 paragraphs.

9 43. Under California’s Housing Element Law, the City must ensure that its general plan
10 contains a legally compliant housing element.

11 44. The City has failed to carry out its duty. Based on the events alleged in paragraphs
12 above, the City has failed to adopt a legally compliant Sixth Cycle Housing Element by the October
13 15, 2021 statutory deadline.

14 45. The City’s failure to act is arbitrary, capricious, entirely lacking in evidentiary support,
15 contrary to established public policy, unlawful, procedurally unfair, an abuse of discretion, and a
16 failure to act as required by law.

17 46. Accordingly, a writ of mandate should issue ordering the City to come into compliance
18 with California’s Housing Element Law (Gov. Code, § 65580, *et seq.*) and to ensure that the City’s
19 Sixth Cycle Housing Element meets the City’s regional housing needs goals, as determined by
20 HCD.

21 47. Petitioners have a beneficial interest in the issuance of such a writ, given their authority
22 and mandate to enforce substantial compliance with California’s Housing Element Law. Likewise,
23 the public at large, as well as the lower income residents and workforce in the City, have a
24 significant interest in ensuring that the City complies with the law.

25 48. Petitioners have exhausted all required administrative remedies or are excused from
26 exhausting its remedies due to the futility of pursuing such remedies, among other things.

27
28

1 49. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law.
2 The only remedy provided by law for Petitioners to obtain relief is this Petition for Writ of Mandate
3 pursuant to Code of Civil Procedure section 1085.

4 **SECOND CAUSE OF ACTION**

5 **Declaratory Relief (Code Civ. Proc., § 1060; Gov. Code §§ 65755, 65757, 65585)**

6 **[Against All Defendants]**

7 50. Petitioners incorporate by reference each and every allegation of the preceding
8 paragraphs.

9 51. There is an actual, present controversy between Petitioners and the City as to whether
10 the City has complied with California’s Housing Element Law (Gov. Code, § 65580, *et seq.*). Based
11 on the events alleged in paragraphs above, Petitioners contend that the City is noncompliant with
12 the Housing Element Law and is making insufficient progress on becoming compliant. Further,
13 based on information and belief, Petitioners allege that the City either disagrees with HCD or,
14 alternatively, is aware that it is not substantially compliant and has failed to take sufficient action
15 to substantially comply, even though its draft Sixth Cycle Housing Element is now three years
16 overdue.

17 52. It is necessary and appropriate for the Court to render a declaratory judgment that sets
18 forth the parties’ legal rights and obligations with respect to whether the City is substantially
19 compliant with California’s Housing Element Law. Among other things, such a judgment would
20 inform the parties’ conduct in connection with future contemplated amendments to the City’s
21 Housing Element, including those that occur routinely at the beginning of each housing cycle.

22 53. Petitioners therefore request a declaration that the City is not substantially compliant
23 with California’s Housing Element Law (Gov. Code, § 65580, *et seq.*).

24 54. In addition to these remedies, Petitioners are immediately entitled to temporary relief
25 under Government Code section 54757, including but not limited to the suspension of the City’s
26 authority to issue non-residential building permits, until the City has substantially complied with
27 the Housing Element Law by properly adopting and implementing an adequate housing element.
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, HCD prays as follows:

3 1. For a writ of mandate ordering the City to adopt a housing element in compliance with
4 the Housing Element Law within 120 days (Gov. Code, § 65580, *et seq.*) and to ensure that the
5 housing element meets the City’s regional housing needs goals for the planning period, as
6 determined by HCD.

7 2. For temporary relief, including but not limited to the suspension of the City’s
8 nonresidential permitting authority, and mandating the approval of certain residential
9 developments. (Gov. Code, §§ 65755, 65757.)

10 3. For a declaration that the City is in violation of California’s Housing Element Law
11 (Gov. Code, § 65580, *et seq.*).

12 4. For statutory fines, levies, and penalties. (Gov. Code, § 65585, subd. (l).)

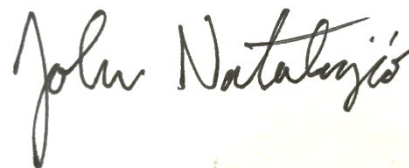
13 5. For costs and attorney’s fees.

14 6. For any other relief the Court may deem appropriate.

15
16 Dated: October 31, 2024

Respectfully submitted,

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27 *and Community Development*
28