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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE

13 **CALIFORNIANS FOR HOMEOWNERSHIP, INC.,**
14
Petitioner,
15
v.
16
17 **CITY OF FULLERTON,**
18
Respondent.

Case No. 30-2022-01281840-CU-WM-CJC

ASSIGNED FOR ALL PURPOSES TO
Judge Jonathan Fish

**[PROPOSED] PETITION AND
COMPLAINT IN INTERVENTION**

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20 **PEOPLE OF THE STATE OF CALIFORNIA EX**
REL. ROB BONTA, AND THE CALIFORNIA
21 **DEPARTMENT OF HOUSING AND COMMUNITY**
DEVELOPMENT,
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Petitioners and Plaintiffs
in Intervention.

1 **INTRODUCTION**

2 1. Californians continue to suffer under a housing affordability crisis. The Legislature
3 has found that “[t]he lack of housing . . . is a critical problem that threatens the economic,
4 environmental, and social quality of life in California.” (Gov. Code, § 65589.5, subd. (a)(1)(A),
5 (B).) This crisis is “hurting millions of Californians, robbing future generations of the chance to
6 call California home, stifling economic opportunities for workers and businesses, worsening
7 poverty and homelessness, and undermining the state’s environmental and climate objectives.”
8 (*Id.*, subd. (a)(2)(A).)

9 2. A key contributor to this crisis is the failure of local governments to plan for the
10 necessary housing supply. To counteract this, the Legislature requires local governments to
11 include housing elements in their general plans. A housing element must include, among other
12 things, an assessment of housing needs, an inventory of resources and constraints relevant to
13 meeting those needs, and a program to implement the policies, goals, and objectives of the
14 housing element. Respondent/Defendant the City of Fullerton has not complied with this
15 requirement by its failure to timely update its Housing Element.

16 3. Petitioners/Plaintiffs the California Department of Housing and Community
17 Development (HCD) and the People of California ex rel. Rob Bonta (collectively, “Petitioners”)
18 bring this action against the City of Fullerton (the “City”) to remedy this violation. HCD requests
19 that the Court issue a writ ordering the City to bring its housing element into compliance with
20 State law, and issue a declaration that the City has failed to fulfill its planning obligations.

21 **PARTIES**

22 4. The Attorney General, as the chief law enforcement officer of the State of California,
23 brings this action under his broad independent powers to enforce state laws.

24 5. HCD is a public agency of the State of California. (Gov. Code, § 12804.) Among
25 other duties, HCD is responsible for developing housing policy and building codes, for regulating
26 manufactured homes and mobile home parks, and for enforcing state housing laws in a manner
27 that meaningfully and positively impacts the provision of housing in all communities across the
28 State.

1 6. The City of Fullerton is a municipal corporation formed and existing under the laws
2 of the State of California, of which it is a political subdivision.

3 **VENUE AND JURISDICTION**

4 7. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
5 sections 187, 1060, and 1085.

6 8. Venue is proper in this Court because the City is located in Orange County and the
7 violations of law alleged herein occurred in Orange County.

8 **BACKGROUND AND FACTUAL ALLEGATIONS**

9 **Housing Elements and the Planning Process**

10 9. The Legislature has declared that “[t]he availability of housing is of vital statewide
11 importance, and the early attainment of decent housing and a suitable living environment for
12 every Californian . . . is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)
13 California law requires that all local governments adequately plan to meet the housing needs of
14 everyone in the community, at all economic levels.

15 10. To meet this requirement, every city and county must adopt and periodically update a
16 housing element as part of its general plan. (See Gov. Code, §§ 65302, subd. (c), 65580, *et seq.*)
17 The law mandating this adoption and periodic update is known as the “Housing Element Law.”
18 (Gov. Code, § 65580, *et seq.*) California’s Housing Element Law requires local governments to
19 adopt plans and regulatory systems that provide opportunities for, and do not unduly constrain,
20 housing development, especially for a locality’s lower-income households and workforce. As a
21 result, housing policy in California rests largely on the effective implementation of the housing
22 element contained in the local general plan.

23 11. The housing element is a roadmap for housing development in a given community.
24 The housing element must identify and analyze existing and projected housing needs, and must
25 include “a statement of goals, policies, quantified objectives, financial resources, and scheduled
26 programs for the preservation, improvement, and development of housing.” (Gov. Code,
27 § 65583.) The housing element must also “identify adequate sites for housing” and “make
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1 adequate provision for the existing and projected needs of all economic segments of the
2 community.” (*Ibid.*) Each housing element is also subject to review by HCD, as discussed below.

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

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

16 14. Once the RHNA is set, the COG is responsible for allocating the housing need among
17 all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each local
18 government must then prepare a housing element that identifies adequate sites to accommodate
19 that jurisdiction’s fair share of the RHNA at each income level. (Gov. Code, §§ 65583, 65583.2.)
20 Sites must be suitable for residential development and must be made available during the
21 planning period. (Gov. Code, § 65583.2, subd. (a).) If a sufficient quantity of adequate sites is not
22 currently available, the housing element must commit to identifying and rezoning additional sites
23 within three years from the date of adoption. (Gov. Code, §§ 65583, subd. (c)(1), 65583.2, subd.
24 (h).) The housing element must also accommodate any unmet portion of the RHNA from the
25 prior planning period. (Gov. Code, § 65584.09, subd. (a).)

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

3 16. Each local government must submit a draft housing element to HCD before adoption.
4 (Gov. Code, § 65585, subd. (b)(1).) HCD must review the draft element and issue findings as to
5 whether the draft substantially complies with Housing Element Law. (*Id.*, subds. (b)(3), (d).)
6 After adopting the final housing element, the local government must again submit the element to
7 HCD, and HCD must again review and report its findings to the local government. (*Id.*,
8 subds. (g), (h).)

9 17. Under Chapter 370, Statutes of 2017 (“AB 72”), codified at Government Code
10 section 65585, subdivisions (i) and (j), HCD has authority to review any action or failure to act by
11 a local government that it determines is inconsistent with an adopted housing element or
12 section 65583 of California’s Housing Element Law. This includes failure to implement program
13 actions included in the housing element. HCD may revoke housing element compliance if the
14 local government’s actions do not comply with state law.

15 18. AB 72 also authorizes HCD to notify the Office of the Attorney General of California
16 that the local jurisdiction is in violation of state law for noncompliance with, among other
17 statutes, California’s Housing Element Law.

18 19. Pursuant to Government Code section 65585, subdivision (i)(1)(A), HCD may take
19 any of the actions authorized by AB 72 after issuing written findings to the local government “as
20 to whether the action or failure to act substantially complies with [California’s Housing Element
21 Law],” and providing a reasonable time, no longer than 30 days, for the local government to
22 respond. (Gov. Code, § 65585, subd. (i)(1)(A).) Prior to an enforcement action brought by the
23 Attorney General’s Office, HCD must also offer the City the opportunity for two in-person or
24 telephone meetings to discuss the violation, and provide the City with written findings regarding
25 the violation. (Gov. Code, § 65585, subd. (k).) As stated below, HCD has satisfied this
26 requirement here.

1 **The City of Fullerton Housing Element**

2 20. The statutory deadline for the City to adopt a sixth cycle housing element was
3 October 15, 2021.

4 21. To date, the City has not adopted a sixth cycle updated housing element.

5 22. On November 23, 2021, HCD issued a letter to the City to alert it to its
6 noncompliance with the Housing Element Law.

7 23. On November 30, 2021, the City submitted a draft housing element to HCD. HCD
8 then issued a findings letter on January 27, 2022 identifying multiple deficiencies that would need
9 to be revised before final adoption.

10 24. On September 16, 2022, Californians for Homeownership, Inc. filed the instant
11 action, a petition for writ of mandate to compel the City to adopt a substantially-compliant sixth
12 cycle housing element.

13 25. On May 19, 2023, HCD issued a letter of inquiry requesting an update on Fullerton's
14 progress in adopting a housing element. The City responded on June 8, 2023 that it anticipated
15 submitting a revised draft housing element by March of 2024.

16 26. On July 20, 2023, HCD issued a Notice of Violation informing the City that it was
17 out of compliance with the Housing Element Law, advised the City of the potential penalties for
18 noncompliance, and stated that HCD would refer the matter to the Office of the Attorney General
19 absent any efforts at compliance.

20 27. HCD met with City representatives on August 30, 2023 and October 3, 2023 to
21 discuss the City's violation and its progress towards housing element compliance.

22 **FIRST CAUSE OF ACTION**

23 **Writ of Mandate (Code Civ. Proc., § 1085)**

24 28. HCD incorporates by reference each and every allegation of the preceding
25 paragraphs.

26 29. Under California's Housing Element Law, the City must ensure that its general plan
27 contains a legally compliant housing element.

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1 sufficient action to substantially comply, even though its draft sixth cycle housing element is now
2 more than two years overdue.

3 38. It is necessary and appropriate for the Court to render a declaratory judgment that sets
4 forth the parties' legal rights and obligations with respect to whether the city is substantially
5 compliant with California's Housing Element Law. Among other things, such a judgment would
6 inform the parties' conduct in connection with future contemplated amendments to the City's
7 housing element, including those that occur routinely at the beginning of each housing cycle.

8 39. HCD therefore requests a declaration that the City is not substantially compliant with
9 California's Housing Element Law (Gov. Code, § 65580, *et seq.*).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, HCD prays as follows:

- 12 1. For a writ of mandate ordering the City to submit a draft housing element in compliance
13 with California's Housing Element Law (Gov. Code, § 65580, *et seq.*) and to ensure
14 that the draft housing element meets the City's regional housing needs goals for the
15 planning period, as determined by HCD.
 - 16 2. For a declaration that the City has not substantially complied with California's Housing
17 Element Law (Gov. Code, § 65580, *et seq.*).
 - 18 3. For any other relief the Court may deem appropriate.
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1 Dated: January 17, 2024

Respectfully submitted,

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