

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mitchell Beckloff

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11
12 CALIFORNIANS FOR
HOMEOWNERSHIP, INC., a
13 California nonprofit public benefit
corporation,

14 Petitioner,

15 v.

16 CITY OF MANHATTAN BEACH,

17 Respondent.
18

Case No. 22STCP01417

**VERIFIED PETITION FOR
WRIT OF MANDATE**

[C.C.P. § 1085; Gov. Code §§ 65587, 65751]

19 Petitioner Californians for Homeownership (“Californians”) alleges as follows:

20 1. California is in the midst of a “housing supply and affordability crisis of
21 historic proportions.” Gov. Code 65589.5(a)(2). That crisis is driven in major part by
22 “activities and policies of many local governments that limit the approval of
23 housing” Gov. Code § 65589.5(a)(1)(B). As part of the effort to address this
24 crisis, cities must plan for housing development in their housing elements.

25 2. Manhattan Beach has adopted a housing element that does not identify
26 adequate sites for housing development.

27 3. On behalf of the important public interest in the creation of new housing,
28 Californians seeks a writ compelling the City to adopt a revised housing element.

CALIFORNIANS FOR HOMEOWNERSHIP, INC.
LOS ANGELES, CA

PARTIES

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2 4. Petitioner Californians for Homeownership, Inc. (“Californians”) is a
3 California nonprofit public benefit corporation and 501(c)(3) public charity. Its
4 mission is to address California’s housing crisis through litigation in support of the
5 production of housing affordable to families at all income levels.

6 5. Respondent City of Manhattan Beach is a city situated in Los Angeles
7 County.

JURISDICTION AND VENUE

8
9 6. The Court has general subject matter jurisdiction over this action
10 pursuant to Government Code Sections 65587 and 65751 and Code of Civil Procedure
11 Section 1085.

12 7. The Court has personal jurisdiction over the City of Manhattan Beach
13 pursuant to Code of Civil Procedure Section 410.10.

14 8. Venue for this action properly lies with this Court pursuant to Code of
15 Civil Procedure Section 394.

STATUTORY BACKGROUND

16
17 9. In recent years, the California Legislature has sought to address what it
18 has described as a “housing supply and affordability crisis of historic proportions.”
19 Gov. Code 65589.5(a)(2). “The consequences of failing to effectively and
20 aggressively confront this crisis are hurting millions of Californians, robbing future
21 generations of the chance to call California home, stifling economic opportunities for
22 workers and businesses, worsening poverty and homelessness, and undermining the
23 state’s environmental and climate objectives. While the causes of this crisis are
24 multiple and complex, the absence of meaningful and effective policy reforms to
25 significantly enhance the approval and supply of housing affordable to Californians of
26 all income levels is a key factor.” *Id.* (subdivision numbers omitted).

27 10. As a result of the housing crisis, younger Californians are being denied
28 the opportunities for housing security and homeownership that were afforded to

1 previous generations. Families across economic strata are being forced to rent rather
2 than experience the wealth-building benefits of homeownership.¹ Many middle and
3 lower income families devote more than half of their take-home pay to rent, leaving
4 little money to pay for transportation, food, healthcare and other necessities.² Unable
5 to set aside money for savings, these families are also at risk of losing their housing in
6 the event of a personal financial setback. Indeed, housing insecurity in California has
7 led to a mounting homelessness crisis.³

8 11. Beyond the human toll, California’s housing crisis harms the
9 environment. “[W]hen Californians seeking affordable housing are forced to drive
10 longer distances to work, an increased amount of greenhouse gases and other
11 pollutants is released and puts in jeopardy the achievement of the state’s climate
12 goals.” Gov. Code § 65584.

13 12. At the core of California’s affordable housing crisis is a failure to build
14 enough housing to meet demand. California’s Legislative Analyst’s Office estimates
15 that the state should have been building approximately 210,000 units a year in major
16 metropolitan areas from 1980 to 2010 to meet housing demand. Instead, it built
17 approximately 120,000 units per year.⁴ Today, California ranks 49th out of the 50
18 states in existing housing units per capita.⁵

20 ¹ California Department of Housing and Community Development, *California’s*
21 *Housing Future: Challenges and Opportunities: Final Statewide Housing Assessment*
22 *2025* (2018), available at http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf, at 18-19.

23 ² *Id.* at 27.

24 ³ *Id.* at 3, 48-50.

25 ⁴ Legislative Analyst’s Office, *California’s High Housing Costs: Causes and*
26 *Consequences* (2015), available at <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>, at 21.

27 ⁵ McKinsey & Company, *A Tool Kit to Close California’s Housing Gap: 3.5*
28 *Million Homes By 2025* (2016), available at https://www.mckinsey.com/~media/mckinsey/featured_insights/Urbanization/Closing_Californias_housing_gap/Closing-Californias-housing-gap-Full-report.ashx, at document page 6.

1 13. California’s housing crisis has been building for decades. The
2 Legislature has recognized that the crisis is driven, in part, “by activities and policies
3 of many local governments that limit the approval of housing, increase the cost of
4 land for housing, and require that high fees and exactions be paid by producers of
5 housing.” Gov. Code § 65589.5(a)(1)(B).

6 14. Over the last five decades, the Legislature has increasingly sought to
7 address the power imbalance at play in local housing policy. The most important state
8 policy addressing the housing crisis is the Regional Housing Needs Allocation
9 (“RHNA”) and housing element system.

10 15. The RHNA system is a process for assessing and allocating housing
11 targets on a periodic basis, generally every eight years. Gov. Code § 65588. It starts
12 with an assessment of statewide housing needs by the California Department of
13 Housing and Community Development (“HCD”). The Department allocates the
14 state’s anticipated housing needs on a region-by-region basis, at different levels of
15 affordability, based on established criteria. Gov. Code §§ 65584.01, 65588. This need
16 is then usually meted out to individual localities by a regional council of governments.
17 Gov. Code § 65584.05.

18 16. Once the allocations are final, each locality is tasked with developing an
19 action plan (the housing element) to enact land use policies that will produce enough
20 housing to meet its RHNA goals. Gov. Code §§ 65583, 65583.2. The housing
21 element must provide an inventory of sites available for residential development and
22 assess constraints and market realities that affect the likely development activity at
23 those sites, including local land use regulations. Localities must make changes to
24 their land use rules, including by rezoning land, if needed to enable housing sufficient
25 to meet their RHNA goals. Gov. Code § 65583(c), 65583.2(h).

26 17. A city may meet its RHNA allocation by planning for housing on vacant
27 or nonvacant sites. Gov. Code § 65583.2(a). The housing element must contain a
28 parcel specific inventory of sites where additional housing could be developed,

1 including existing residential sites that could be redeveloped with more residential
2 capacity (e.g., through rezoning and/or redevelopment), and non-residential sites that
3 could be redeveloped as housing through rezoning. Gov. Code § 65583.2(a). For
4 nonvacant sites, this sites inventory must describe the specific existing use on each
5 site. Gov. Code §§ 65583.2(b)(3), (c).

6 18. Under Government Code Section 65583.2(g)(1), for each nonvacant site,
7 a city must “specify the additional development potential . . . within the planning
8 period,” and it must explain how the developmental potential for each site was
9 measured. The methodology must consider the extent to which the existing use may
10 impede development.

11 19. Additionally, if a city intends to rely on nonvacant sites to make up more
12 than fifty percent of its lower-income housing need, it is also subject to Government
13 Code Section 65583.2(g)(2). This provision requires the city to adopt “findings based
14 on substantial evidence that the use is likely to be discontinued during the planning
15 period” at the time the City adopts its housing element. Without these findings, the
16 existing use is “presumed to impede additional residential development.”

17 20. Each city submits a draft of its housing element to HCD for review and
18 receives written findings. Gov. Code § 65585(b)(3). In its written findings, HCD
19 makes a determination whether the draft housing element “substantially complies”
20 with the requirements of state law. Gov. Code § 65585(d). Prior to adoption of a
21 housing element, a city must consider HCD’s findings and either amend its housing
22 element accordingly or provide findings of its own as to why it believes the housing
23 element is compliant despite HCD’s determination. Gov. Code §§ 65585(e), (f).

24 21. California is currently in the midst of the sixth statewide housing element
25 update cycle. For cities in the Southern California region, including Manhattan
26 Beach, the sixth cycle covers an eight-year planning period starting October 15, 2021,
27 and these cities were required to update their housing elements by that date. Gov.
28 Code § 65588(e)(3).

1 22. A city without a compliant updated housing element is prohibited from
2 using its general plan and zoning standards to reject certain housing development
3 projects. Gov. Code § 65589.5(d)(1).

4 23. A city that does not adopt a compliant updated housing element within
5 120 days of the due date is subject to an accelerated one-year deadline for all rezoning
6 under the housing element, once adopted. Gov. Code §§ 65583(c)(1)(A), 65583.2(c),
7 65588(e)(4)(C).

8 24. An interested party may bring an action under Code of Civil Procedure
9 Section 1085 to determine whether a housing element conforms to the statutory
10 requirements and to compel a city to adopt a compliant housing element. Gov. Code
11 §§ 65587, 65751.

12 25. If a city's housing element does not substantially comply with state law,
13 a reviewing court must order the city to bring it into compliance within 120 days.
14 Gov. Code § 65754(a). After adopting a housing element subject to such an order, the
15 city must subsequently rezone to obtain consistency with the housing element within
16 120 days. Gov. Code § 65754(b).

17 26. Additionally, the court must subject the city to penalties, which can
18 include a suspension of all non-residential permitting and judicial approval of housing
19 development projects. Gov. Code §§ 65755(a)(1), (4). The court can also grant this
20 relief on an interim basis during the pendency of litigation. Gov. Code § 65757.

21 **FACTS**

22 27. The statutory deadline for the City to adopt a compliant sixth cycle
23 updated housing element was October 15, 2021.

24 28. As this deadline approached, the City was far behind in developing its
25 housing element. Indeed, the City only submitted its initial draft housing element to
26 HCD on October 15, 2021.

27 29. In a December 14, 2021 letter, HCD provided the City the results of its
28 review of the City's draft, indicating that it needed significant changes in order to

1 comply with state law.

2 30. HCD’s letter specifically noted that the City was required to provide
3 more information on the suitability of nonvacant sites, including the impediment
4 created by the existing use of these sites.

5 31. Additionally, HCD’s letter outlined the evidentiary findings the City
6 would be required to make due to the fact that its housing element relies on nonvacant
7 sites to accommodate more than fifty percent of the City’s lower-income RHNA.

8 32. The City’s City Council adopted a legally inadequate sixth cycle updated
9 housing element on March 22, 2022.

10 33. Californians is a non-profit organization that aims to address California’s
11 housing crisis, generally through impact litigation to support the development of and
12 access to housing for families at all income levels. From 2019 through 2021,
13 Californians participated in five lawsuits as petitioner or intervenor, and three more as
14 *amicus curiae*.

15 34. Californians is currently engaged in a statewide effort to enforce both the
16 substantive requirements and the deadlines in state housing element law, for the sixth
17 housing element update cycle. As part of this effort, it has contacted approximately
18 50 cities to address concerns about their compliance with state law. To date, in 2022,
19 Californians has filed five lawsuits to enforce state housing element law.

20 35. On March 22, 2022, prior to the City Council’s meeting, Californians
21 submitted a letter to the City Council raising substantially the same concerns raised in
22 this Petition.

23 36. On April 11, 2022, Californians sent a letter to the City Council
24 indicating that it intended to initiate litigation over the City’s inadequate housing
25 element if the parties could not come to a compromise. The letter requested a
26 response by April 14, 2022, but the City did not respond.

27 37. The City’s adopted housing element does not address HCD’s concerns, it
28 does not contain the analysis required under Government Code Section 65583.2(g)(1),

1 and in adopting it the City did not make the findings required under Government
2 Code Section 65583.2(g)(2).

3 38. For the City’s existing residentially zoned sites and the sites the City
4 proposes rezoning, the provided sites inventory does not account for the impediment
5 created by the existing uses on nonvacant sites, including the possibility that a site
6 will be maintained in its current use rather than redeveloped during the planning
7 period.

8 39. The City’s housing element relies on nonvacant sites (mostly through
9 rezoning) to satisfy over fifty percent of the City’s lower-income RHNA, but the City
10 has not made findings identifying any evidence that the existing uses on each of these
11 sites will be discontinued during the planning period.

12 40. The housing element includes lower-income sites on City-owned parcels
13 that the City does not appear to intend to redevelop.

14 41. In light of these inadequacies, the City has not complied with the
15 substantive requirements of state housing element law and has not identified adequate
16 sites to satisfy its RHNA allocation. The housing element therefore does not
17 substantially comply with state law.

18 **FIRST CAUSE OF ACTION**

19 **Writ of Mandate to Compel Compliance with Housing Element Law**
20 **(Gov. Code §§ 65587, 65751; C.C.P. § 1085)**

21 42. Californians incorporates and realleges all of the foregoing paragraphs.

22 43. Under Government Code Section 65587, any interested party may bring
23 an action to determine whether all or part of a housing element conforms to the
24 statutory requirements.

25 44. Pursuant to Government Code Sections 65587 and 65751, an action to
26 challenge the legal adequacy of a housing element shall be brought under Code of
27 Civil Procedure Section 1085.

28 45. Californians is an interested party for the purposes of these statutes.

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subdivision (d) of that section—that is, a project in which either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Health and Safety Code Section 50079.5, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Health and Safety Code Section 50093, or persons and families of middle income, as defined in Government Code Section 65008—or to condition the approval of such a project in a manner that renders it infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards.

- 4. Costs of suit;
- 5. Attorneys’ fees under Code of Civil Procedure Section 1021.5 and as otherwise allowed by law;
- 6. Such other and further relief as the Court deems just and proper.

Dated: April 19, 2022

Respectfully Submitted,
CALIFORNIANS FOR HOMEOWNERSHIP, INC.

By 
Matthew P. Gelfand

Attorneys for Petitioner,
Californians for Homeownership, Inc.

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VERIFICATION

I, Matthew P. Gelfand, declare:

1. I hold the position of Counsel at Petitioner Californians for Homeownership, Inc., and am familiar with the matters discussed in the foregoing Petition.

2. I have read the Petition and know the contents thereof. The statements of fact therein are true and correct of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 19, 2022 at Los Angeles, California.



Matthew P. Gelfand