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County of San Diego
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Clerk of the Superior Court
By Megan Diethofer, Deputy Clerk

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**

13 CALIFORNIANS FOR
14 HOMEOWNERSHIP, INC., a
15 California nonprofit public benefit
16 corporation,

17 Petitioner,

18 v.

19 CITY OF CORONADO,

20 Respondent.

Case No. 37-2021-00002339-CU-WM-CTL

**VERIFIED PETITION FOR
WRIT OF MANDATE**

[C.C.P. § 1085; Gov. Code § 65852.2]

21 **INTRODUCTION**

22 Petitioner Californians for Homeownership, Inc. alleges as follows:

23 1. California is in the midst of a housing supply and affordability crisis of
24 historic proportions. As one critical element of its effort to address this crisis, the
25 Legislature gave every homeowner the right to construct an accessory dwelling unit
26 (“ADU”), which can be built simultaneously with a new single-family home.

27 2. In 2020, Coronado passed an ordinance that complies with this mandate.

28 3. In violation of state law and the City’s own ordinance, staff have adopted
a practice of refusing to permit ADUs with new single-family homes.

4. On behalf of the important public interest in the creation of new housing,
Californians for Homeownership seeks an end to this unlawful practice.

PARTIES

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2 5. 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 6. Respondent City of Coronado is a city situated in San Diego County.

7 **JURISDICTION AND VENUE**

8 7. The Court has general subject matter jurisdiction over this action
9 pursuant to Code of Civil Procedure Section 1085.

10 8. The Court has personal jurisdiction over the City of Coronado pursuant
11 to Code of Civil Procedure Section 410.10.

12 9. Venue for this action properly lies with this Court pursuant to Code of
13 Civil Procedure Section 394.

14 **CALIFORNIA’S ACCESSORY DWELLING UNIT LAW**

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

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

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

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

18 14. California’s housing crisis has been building for decades. The
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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/Industries/Public and Social Sector/Our Insights/Closing Californias housing gap/Closing-Californias-housing-gap-Full-report.pdf](https://www.mckinsey.com/~media/McKinsey/Industries/Public%20and%20Social%20Sector/Our%20Insights/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.pdf), at document page 6.

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

5 15. In 1982, the Legislature first adopted a statute regulating ADUs, then
6 called “second units.” Stats. 1982, c. 1440. The Legislature found that “there is a[]
7 tremendous unmet need for new housing to shelter California’s population” and that
8 “[t]he improved utilization of this state’s existing housing resources offers an
9 innovative and cost-effective solution to California’s housing crisis.” *Id.* § 1.

10 16. In 2016, the Legislature passed SB 1069 and AB 2299, designed to
11 further address the housing crisis by easing local restrictions on the development of
12 ADUs. Stats. 2016, c. 720; Stats. 2016, c. 735. The Legislature found that “accessory
13 dwelling units are a valuable form of housing in California,” that “accessory dwelling
14 units provide housing for family members, students, the elderly, in-home health care
15 providers, the disabled, and others, at below market prices within existing
16 neighborhoods,” that “accessory dwelling units offer lower cost housing to meet the
17 needs of existing and future residents within existing neighborhoods, while respecting
18 architectural character,” and that “accessory dwelling units are, therefore, an essential
19 component of California’s housing supply.” Gov. Code § 65852.150.

20 17. From 2017 to 2019, the Legislature further eased local restrictions on
21 ADUs by enacting several additional ADU law reforms. Stats. 2017, c. 594 (SB 229);
22 Stats. 2017, c. 602 (AB 494); Stats. 2019, c. 653 (SB 13); Stats. 2019, c. 655 (AB 68);
23 Stats. 2019, c. 659 (AB 881).

24 18. These collective reforms to ADU law were codified in Government Code
25 Section 65852.2. Under Section 65852.2(a), for most ADUs, the Legislature
26 established default statewide approval rules. A city is permitted to pass its own
27 ordinance to impose certain limited development standards on these ADUs. But it
28 must apply the state default rules “unless and until [it] adopts an ordinance that

1 complies with” the limits set forth in the law. Gov. Code § 65852.2(a)(4). Outside of
2 a compliant local ADU ordinance, “[n]o other local ordinance, policy, or regulation
3 shall be the basis for the denial of a” permit to build an ADU. Gov. Code
4 § 65852.2(a)(5).

5 19. All ADUs, whether permitted under the state default rules or a valid local
6 ordinance, must be permitted ministerially, with no discretionary review or hearing.
7 Gov. Code §§ 65852.2(a)(3), (4).

8 20. Among the amendments made to Section 65852.2 in 2019 was a change
9 to allow simultaneous development of an ADU with a new primary dwelling.
10 Whereas Section 65852.2 previously allowed cities to limit ADUs to lots with
11 existing dwellings, the new law requires cities to permit ADUs when “[t]he lot is
12 zoned to allow single-family or multifamily dwelling residential use and includes a
13 proposed or existing dwelling.” Gov. Code § 65852.2(a)(1)(D)(ii) (emphasis added).

14 21. The new law also provided procedural accommodations for these
15 simultaneous development applications: “If the permit application to create an
16 accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit
17 application to create a new single-family dwelling on the lot, the permitting agency
18 may delay acting on the permit application for the accessory dwelling unit or the
19 junior accessory dwelling unit until the permitting agency acts on the permit
20 application to create the new single-family dwelling, but the application to create the
21 accessory dwelling unit or junior accessory dwelling unit shall be considered without
22 discretionary review or hearing.” Gov. Code § 65852.2(a)(3).

23 22. After construction of a building project is complete, the permitting
24 jurisdiction issues a certificate of occupancy which constitutes final approval that the
25 project has been constructed as authorized. Building Code § 111.2. In order to ensure
26 that an applicant cannot abandon construction of a primary dwelling after constructing
27 an ADU (which is intended to be an accessory use), the new ADU law requires that
28 an ADU must receive its certificate of occupancy either simultaneously with or after

1 the certificate of occupancy is issued for the primary dwelling. Gov. Code
2 § 65852.2(k).

3 **FACTS**

4 *Reports From Applicants Lead Californians To Launch An Investigation*

5 23. In April 2020, as part of its statewide investigation of local compliance
6 with state ADU law, Californians received a report that the City of Coronado was
7 refusing to comply with the portions of Government Code Section 65852.2 that allow
8 simultaneous development of an ADU with a new single-family dwelling.

9 24. As part of its initial investigation, Californians obtained an April 24
10 email from Coronado Community Development Director Richard Grunow to an ADU
11 applicant’s representative, which stated that the applicant would need to “obtain a
12 certificate of occupancy” for the main dwelling—that is, fully complete the
13 construction of the dwelling—“prior to proceeding with an ADU application.” The
14 City later produced a copy of this email in response to Californians’ public records
15 request.

16 *The City’s Legal Counsel Acknowledges Staff’s Error And Promises To Correct It*

17 25. Shortly after receiving this information, Californians reached out to
18 Coronado City Attorney Johanna Canlas to request an informal discussion regarding
19 the City’s ADU policies. Ms. Canlas refused.

20 26. On May 5, 2020, Californians wrote to the Coronado City Council to
21 demand the City come into compliance with the portions of Government Code
22 Section 65852.2 that allow simultaneous development of an ADU with a new single-
23 family dwelling.

24 27. After this demand, legal counsel for Coronado agreed to discuss the
25 City’s ADU practices. On May 11, 2020, counsel for Californians had a phone
26 discussion with the City’s legal counsel Lauren Hendrickson. During that discussion,
27 Ms. Hendrickson confirmed that Mr. Grunow’s April 24 email was legally incorrect.
28 She confirmed that an applicant would be entitled to submit an ADU application with

1 an application to develop a new single-family dwelling and to receive approval of that
2 application prior to construction of the new single-family dwelling, to allow the units
3 to be built simultaneously. And she promised that the City would comply with the
4 law going forward.

5 Coronado Adopts An ADU Ordinance That Complies With State Law's Simultaneous
6 Development Provisions, But Continues To Refuse To Accept Applications

7 28. In June 2020, Coronado invoked its option to adopt a local ADU
8 ordinance under Government Code Section 65852.2(a). The adopted ordinance
9 complies with Section 65852.2's requirements regarding simultaneous development:

10 If the permit application for a junior or accessory dwelling unit is
11 submitted with a permit application to create a new single-family
12 dwelling on the lot, the application for the junior or accessory dwelling
13 unit shall not be acted upon until the City acts on the permit application
14 for the new single-family dwelling, but thereafter shall be ministerially
15 processed within 60 days of receipt of a complete application and
16 approved if it meets the requirements of this section. Occupancy of the
junior or accessory dwelling unit shall not be allowed until the City
approves occupancy of the primary dwelling.

17 Coronado Muni. Code § 86.56.105(D).

18 29. Despite this language in the City's ordinance, Californians has continued
19 to receive reports that the City is refusing to accept applications for simultaneous
20 development of an ADU with a new single-family home.

21 30. For example, on June 22, 2020, Community Development Director Rich
22 Grunow wrote to an applicant's representative to say that the City would not consider
23 the new single-family dwelling the applicant had submitted until the applicant
24 removed all references to the ADU from the application drawings. In the case of an
25 attached ADU like the one the applicant was proposing, the practical effect of
26 requiring references to the ADU to be removed from the drawings for the primary
27 dwelling is that the ADU cannot be constructed with the primary dwelling. The
28 applicant's representative responded seeking clarification about whether the primary

1 dwelling and ADU could be developed together simultaneously, but Mr. Grunow did
2 not respond. Californians obtained these emails through public records requests.

3 31. On January 8, 2021, two applicants filed a Verified Petition for Writ of
4 Mandate against the City, alleging that the City had refused to accept ADU
5 applications in connection with their applications to develop new primary dwellings.
6 *Wentworth v. City of Coronado*, S.D.S.C. Case No. 37-2021-00000841-CU-WM-
7 CTL.

8 *Coronado Ignores Californians' Final Demand For Compliance*

9 32. Between April 2020 and August 2020, Californians sent over 20 letters
10 and emails to City staff and the City's attorneys seeking confirmation that the City
11 would discontinue its practice of refusing to accept applications to develop ADUs
12 with new primary dwellings.

13 33. On August 26, 2020, after these efforts failed, Californians wrote to the
14 City Council to demand that it instruct staff to comply with the law. The demand
15 identified the substantive issues raised in this Petition and explained that Californians
16 would seek judicial review if the City did not meet its demand.

17 34. On August 27, 2020, Californians obtained written confirmation from
18 staff at the state Department of Housing and Community Development (HCD) that
19 Coronado is required to accept applications to develop ADUs with new primary
20 dwellings, and that under state law, the application drawings submitted with each
21 application may reference the other. HCD is charged with issuing binding guidance
22 regarding the interpretation of state ADU law. Gov. Code § 65852.2(i). On August
23 28, 2020, Californians provided this written confirmation to the City Council.

24 35. The City did not respond to Californians' demand.

25 *Public Interest Representation Is Necessary*

26 36. Californians for Homeownership was founded solely for the purpose of
27 engaging in impact litigation to support the development of and access to housing for
28 families at all income levels, generally though the enforcement of state housing laws.

1 37. Since late 2019, Californians has engaged in a statewide review of local
2 compliance with state ADU law. As part of that review, Californians has reviewed
3 local ADU ordinances in over 200 California cities, counties, and special districts. It
4 has investigated ADU practices in over 40 cities through the use of requests for public
5 records. It has addressed concerns regarding unlawful ADU policies and practices
6 through correspondence to over 140 cities, the vast majority of which have then
7 brought their policies into compliance with state law.

8 38. Californians has been investigating Coronado’s compliance with state
9 ADU law for nine months, by gathering reports from aggrieved applicants and
10 obtaining public records. Californians’ staff have dedicated at least 80 hours to
11 addressing Coronado’s failure to comply with the law.

12 39. Based on Californians’ investigation, it appears that Coronado has
13 engaged in a deliberate practice of denying its homeowners their rights under
14 Government Code Section 65852.2 and attempting to evade scrutiny for this practice.

15 40. Based on Californians’ investigation, it appears that Coronado will
16 continue to deny homeowners their rights under Government Code Section 65852.2
17 even if forced to approve specific applications through project-specific litigation.

18 41. Californians has reached these conclusions for the following reasons,
19 among others:

- 20 a. Coronado has adopted a written ordinance that complies with state
21 law provisions regarding simultaneous development, but its staff
22 are refusing to accept applications consistent with its ordinance.
- 23 b. City staff continued to refuse to accept applications for
24 simultaneous development even after the City’s legal counsel
25 confirmed that it was unlawful to do so.
- 26 c. Public records reveal that City staff established a set of special
27 procedures for applications from a contractor that was representing
28 multiple homeowners seeking to invoke their simultaneous

1 development rights. Specifically, the City established a special
2 tracking document for the contractor’s ADU projects and a
3 June 25, 2020 internal City email reflects that staff had established
4 a special procedure for notifying a designated “team” when the
5 contractor submitted ADU applications.

- 6 d. Coronado initially refused to produce any documents in response
7 to Californians’ public records request. Among the over 40 cities
8 to which Californians has sent public records requests regarding
9 ADU practices, no other city has completely refused to produce
10 records. Coronado only agreed to produce records after
11 Californians threatened litigation under the Public Records Act.
- 12 e. Coronado did not respond to Californians’ pre-litigation demand
13 and has not provided any explanation for its conduct to
14 Californians or anyone else.

15 42. The purpose of Section 65852.2 is to take advantage of the lower cost of
16 construction associated with ADU development to spur the rapid development of new
17 housing. *See* Gov. Code § 65852.150(a). ADUs are among the least expensive forms
18 of new housing in the state, and the development of ADUs in conjunction with new
19 primary dwellings is particularly cost-effective and low-impact.

20 43. The cost of bringing a writ action against the City would significantly
21 increase the total cost of developing an ADU. Thus, if homeowners are forced to file
22 lawsuits to enforce their rights under Section 65852.2, the cost advantages of
23 developing this form of housing will be reduced or eliminated.

24 **FIRST CAUSE OF ACTION**

25 **Refusal To Accept And Ministerially Approve Permit Applications As Required**
26 **Under Gov. Code § 65852.2 And Coronado Muni. Code § 86.56.105**

- 27 44. Californians incorporates and realleges all of the foregoing paragraphs.
- 28 45. Coronado has a present ministerial duty to accept applications from

1 property owners to develop ADUs simultaneously with the development of new
2 single-family homes. Gov. Code § 65852.2(a); Coronado Muni. Code § 86.56.105.

3 46. After a new single-family home is approved, Coronado has a ministerial
4 duty to assess any accompanying ADU application and, if it meets the City's
5 standards for ADUs, to approve that application within 60 days. Gov. Code
6 § 65852.2(a)(3); Coronado Muni. Code § 86.56.105(D).

7 47. City staff have refused and will continue to refuse to perform these duties
8 unless mandated to do so by this Court.

9 48. Californians has no available administrative remedies.

10 49. Californians has no plain, speedy or adequate remedy at law, other than
11 the relief sought herein.

12 50. Californians is a citizen of California and has an interest as a citizen in
13 seeing the state's housing laws enforced.

14 51. In light of California's severe housing access and affordability crisis, the
15 rights afforded by Section 65852.2 are important public rights and the duty of
16 California cities to comply with Section 65852.2 is an important public duty.

17 52. The beneficially interested parties who could otherwise seek to enforce
18 Section 65852.2 will find it difficult and economically inefficient to bring appropriate
19 actions to enforce the law each time Coronado unlawfully refuses to accept or
20 approve an application to develop an ADU with a new single-family dwelling.

21 53. Californians was formed as a non-profit organization for the express
22 purpose of enforcing housing laws, to address the state's housing access and
23 affordability crisis. It has an extensive record working to enforce Section 65852.2,
24 including in Coronado. It therefore has a continuing interest in, and well-established
25 commitment to, the rights provided in Section 65852.2.

26 54. Accordingly, Californians is entitled to a writ of mandate requiring the
27 City of Coronado to accept and ministerially approve applications to simultaneously
28 develop ADUs with new primary dwellings (with the new primary dwelling and ADU

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applications referring to one another as necessary), subject to the timeline and other provisions in Coronado Municipal Code Section 86.56.105(D).

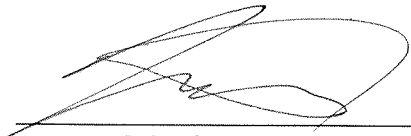
PRAYER

WHEREFORE, Petitioner prays for relief as follows:

1. A peremptory writ of mandate requiring the City of Coronado to accept and ministerially approve applications to simultaneously develop ADUs with new primary dwellings (with the new primary dwelling and ADU applications referring to one another as necessary), subject to the timeline and other provisions in Coronado Municipal Code Section 86.56.105(D);
2. Costs of suit;
3. Attorneys' fees as allowed by law, including under Code of Civil Procedure Section 1021.5;
4. Such other and further relief as the Court deems just and proper.

Dated: January 19, 2021

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 January 19, 2021 at Los Angeles, California.


Matthew P. Gelfand