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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF CONTRA COSTA**

10
11 CALIFORNIA HOUSING DEFENSE
FUND, a California nonprofit public
12 benefit corporation,

13 Petitioner,

14 v.

15 CITY OF MARTINEZ

16 Respondent.

Case No.

**VERIFIED PETITION FOR
WRIT OF MANDATE**

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

17 Petitioner California Housing Defense Fund (“CalHDF”) alleges as follows:

18 1. California is in the midst of a “housing supply and affordability crisis of
19 historic proportions.” Gov. Code § 65589.5(a)(2). That crisis is driven in major part
20 by “activities and policies of many local governments that limit the approval of
21 housing” Gov. Code § 65589.5(a)(1)(B).

22 2. As part of the Legislature’s effort to address this crisis, the law required
23 cities in the Bay Area to adopt updated housing elements by January 31, 2023.

24 3. Martinez did not meet this deadline.

25 4. On behalf of the important public interest in the availability of housing,
26 CalHDF seeks a writ compelling Respondent to adopt an updated housing element.
27

28 **PARTIES**

1 5. Petitioner CalHDF is a California nonprofit public benefit corporation
2 and 501(c)(3) public charity. CalHDF’s mission is to promote housing growth and
3 affordability in California through education and legal advocacy. As part of this
4 mission CalHDF monitors local government policies related to the availability and
5 growth of housing.

6 6. Respondent City of Martinez is a city situated in Contra Costa County.

7 **JURISDICTION AND VENUE**

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

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

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

15 **STATUTORY BACKGROUND**

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

26 11. As a result of the housing crisis, younger Californians are being denied
27 the opportunities for housing security and homeownership that were afforded to
28 previous generations. Families across economic strata are being forced to rent rather

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-](http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf)
 23 [reports/docs/SHA_Final_Combined.pdf](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-](https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf)
 27 [costs/housing-costs.pdf](https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf), at 21.

28 ⁵ McKinsey & Company, *A Tool Kit to Close California’s Housing Gap: 3.5*
 29 *Million Homes By 2025* (2016), available at [https://www.mckinsey.com/~/media/](https://www.mckinsey.com/~media/mckinsey/featured_insights/Urbanization/Closing_Californias_housing_gap/Closing-Californias-housing-gap-Full-report.ashx)
 30 [mckinsey/featured_insights/Urbanization/Closing Californias housing gap/Closing-](https://www.mckinsey.com/~/media/mckinsey/featured_insights/Urbanization/Closing_Californias_housing_gap/Closing-Californias-housing-gap-Full-report.ashx)
 31 [Californias-housing-gap-Full-report.ashx](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 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. Over the last five decades, the Legislature has increasingly sought to
6 address the power imbalance at play in local housing policy. The most important
7 state policy addressing the housing crisis is the Regional Housing Needs Allocation
8 (“RHNA”) and housing element system.

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

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

25 18. Each city submits a draft of its Housing Element to HCD for review and
26 receives written findings. Gov. Code § 65585(b)(3). In its written findings, HCD
27 makes a determination whether the draft housing element “substantially complies”
28 with the statutory requirements. Gov. Code § 65585(d). Prior to adoption of a

1 housing element, a city must consider HCD’s findings and either amend its housing
2 element accordingly or provide findings of its own as to why it believes the housing
3 element is compliant despite HCD’s determination. Gov. Code § 65585(e), (f).

4 19. California is currently in the midst of the sixth statewide housing element
5 update cycle. For cities in the Bay Area region, including Respondent, the sixth cycle
6 covers an eight-year planning period starting January 31, 2023, and these cities were
7 required to update their housing elements by that date. Gov. Code § 65588(e)(3).

8 20. A city without a compliant updated housing element is prohibited from
9 using its general plan and zoning standards to reject certain housing development
10 projects. *See* Gov. Code § 65589.5(d).

11 21. A city that does not adopt a compliant updated housing element within
12 120 days of the due date is subject to accelerated rezoning under the housing element,
13 once adopted. Gov. Code §§ 65583(c)(1)(A), 65583.2(c), 65588(e)(4)(C).

14 22. An interested party may bring an action under Code of Civil Procedure
15 Section 1085 to determine whether a housing element conforms to the statutory
16 requirements and to compel a city to adopt a compliant housing element. Gov. Code
17 §§ 65587, 65751.

18 23. If a city’s housing element does not substantially comply with state law,
19 a reviewing court must order the city to bring it into compliance within 120 days.
20 Gov. Code § 65754(a). After adopting a housing element subject to such an order, the
21 city must subsequently rezone to obtain consistency with the housing element within
22 120 days. Gov. Code § 65754(b).

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

27 **FACTS**

28 25. The statutory deadline for Respondent to adopt a sixth cycle updated

1 Housing Element was January 31, 2023.

2 26. Respondent has not adopted a sixth cycle updated housing element.

3 27. CalHDF is a non-profit organization that aims to address California's
4 housing crisis, generally through impact litigation to support the development of and
5 access to housing for families at all income levels.

6 28. CalHDF is currently engaged in a regionwide effort to enforce both the
7 substantive requirements and the deadlines in state housing element law, for the sixth
8 housing element update cycle. As part of this effort, it has contacted over 30 cities to
9 address concerns about their compliance with state law.

10 29. For cities that have not yet adopted sixth cycle updated housing
11 elements, CalHDF's approach involves contacting each city with a threat of litigation
12 and an offer of compromise whereby CalHDF would agree to delay litigation in
13 exchange for an acknowledgment by the city of certain state law penalties that apply
14 due to its failure to timely adopt an updated housing element.

15 30. On December 16, 2022, CalHDF contacted the Martinez City Council,
16 City Attorney, Planning Department, and City Manager to threaten litigation and offer
17 this compromise.

18 31. On January 10, 2023, Respondent replied expressing a commitment to
19 enact a compliant housing element. To date, no draft housing element has been made
20 available for public review.

21 **FIRST CAUSE OF ACTION**

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

24 32. CalHDF incorporates and realleges all of the foregoing paragraphs.

25 33. Under Government Code Section 65587, any interested party may bring
26 an action to determine whether all or part of a Housing Element conforms to the
27 statutory requirements.

28 34. Pursuant to Government Code Sections 65587 and 65751, an action to

1 challenge the legal adequacy of a housing element or compliance with housing
2 element deadlines shall be brought under Code of Civil Procedure Section 1085.

3 35. CalHDF is an interested party for the purposes of these statutes.

4 36. Respondent’s deadline to adopt a sixth cycle updated housing element
5 was January 31, 2023.

6 37. Because Respondent missed this deadline, its housing element does not
7 substantially comply with state law and it is subject to an action under Government
8 Code Sections 65587 and 65751.

9 38. CalHDF has no available administrative remedies.

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

12 40. Accordingly, CalHDF is entitled to a writ of mandate.

13 **PRAYER**

14 WHEREFORE, Petitioner prays for relief as follows:

15 1. A writ of mandate directing Respondent to adopt a sixth cycle updated
16 housing element pursuant to the schedule set forth in Government Code Section
17 65754.

18 2. An injunction or order providing relief under Government Code Section
19 65755.

20 3. A declaration that:

21 a. From February 1, 2023 until Respondent complies with the Court’s
22 writ of mandate through the adoption of a housing element that
23 substantially complies with state law, Respondent has not had a
24 housing element that was revised in accordance with Government
25 Code Section 65588, and Respondent’s housing element has not
26 substantially complied with state law;

27 b. Respondent is required to complete all required rezonings proposed
28 by the adopted, compliant housing element by the applicable time

1 periods under Articles 10.6 and 14 of Chapter 3 of Division 1 of
2 Title 7 of the Government Code;

3 c. Respondent, until it adopts a compliant housing element, is not
4 permitted to use the provisions in subdivision (d)(1) or (d)(5) of
5 Government Code Section 65589.5 to disapprove a housing
6 development project that qualifies for approval under subdivision
7 (d) of that section—that is, a project in which either (A) at least 20
8 percent of the total units shall be sold or rented to lower income
9 households, as defined in Health and Safety Code Section 50079.5,
10 or (B) 100 percent of the units shall be sold or rented to persons
11 and families of moderate income as defined in Health and Safety
12 Code Section 50093, or persons and families of middle income, as
13 defined in Government Code Section 65008—or to condition the
14 approval of such a project in a manner that renders it infeasible for
15 development for the use of very low, low-, or moderate-income
16 households, or an emergency shelter, including through the use of
17 design review standards.

18 4. Costs of suit;

19 5. Attorneys' fees under Code of Civil Procedure Section 1021.5 and as
20 otherwise allowed by law;

21 6. Such other and further relief as the Court deems just and proper.
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Dated: February 03, 2023

Respectfully Submitted,
CALIFORNIA HOUSING DEFENSE FUND



By _____
Dylan S. Casey

Attorneys for Petitioner,
California Housing Defense Fund

VERIFICATION

I, Dylan S. Casey, declare:

1. I am an employee of and hold the position of Executive Director at Petitioner California Housing Defense Fund, 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 February 3, 2023 at Alameda, California.



Dylan S. Casey

Executive Director, California Housing Defense Fund