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**FILED**

JAN 25 2023

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF MARIN**

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

Petitioner,

v.

16 CITY OF NOVATO,

17 Respondent.

Case No.

*div* 2300180

**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). The housing element planning  
22 process is a key component in the Legislature’s effort to address this crisis.

23 2. In developing their housing elements, cities must comply with a draft  
24 review process that allows state regulators and the public ample time to participate.  
25 Most critically, a draft must be submitted to the state at least 90 days before adoption.

26 3. Novato ignored this requirement and adopted without state review.

27 4. On behalf of the important public interest in addressing the housing  
28 crisis, we seek a writ invalidating the City’s unlawfully adopted housing element.

**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 and availability of housing affordable to families at all income levels.

6 6. Respondent City of Novato is a city situated in Marin 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 Novato 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> Today, California ranks 49th out of the 50  
17 states in existing housing units per capita.<sup>5</sup>

18 14. California’s housing crisis has been building for decades. The  
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20 <sup>1</sup> 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.

24 <sup>2</sup> *Id.* at 27.

25 <sup>3</sup> *Id.* at 3, 48-50.

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

<sup>5</sup> McKinsey & Company, *A Tool Kit to Close California’s Housing Gap: 3.5*  
*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)  
[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)  
[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 need  
15 is then usually meted out to individual localities by a regional council of governments,  
16 as is the case in the Bay Area. 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. At least 90 days before adopting its housing element update, each city  
26 must submit a draft of its Housing Element to HCD for review. Gov. Code  
27 § 65585(b)(1). HCD then has up to the 90 days to provide the city with written  
28 findings and make a determination whether the draft housing element “substantially

1 complies” with the statutory requirements. Gov. Code §§ 65585(b)(3), (d).

2 19. Prior to adoption of a housing element update, a city must consider  
3 HCD’s findings and, if HCD has determined that the draft does not “substantially  
4 comply” with statutory requirements, the City must either amend its housing element  
5 accordingly or provide findings of its own as to why it believes the housing element is  
6 compliant despite HCD’s determination. Gov. Code §§ 65585(e), (f).

7 20. California is currently in the midst of the sixth statewide housing element  
8 update cycle. For cities in the Bay Area, including the City, the sixth cycle covers an  
9 eight-year planning period starting January 31, 2023, and these cities are required to  
10 update their housing elements by that date. Gov. Code § 65588(e)(3).

11 21. A city without a compliant updated housing element is prohibited from  
12 using its general plan and zoning standards to reject certain mixed- and moderate-  
13 income housing development projects. *See* Gov. Code § 65589.5(d).

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 permitting and judicial approval of housing development  
25 projects. Gov. Code §§ 65755(a)(1), (4). The court can also grant this relief on an  
26 interim basis during the pendency of litigation. Gov. Code § 65757.

27 **FACTS**

28 25. The statutory deadline for the City to adopt a sixth cycle housing element

1 update is January 31, 2023.

2 26. In order to send its draft housing element to HCD for review, wait the  
3 statutorily required 90 days, and then lawfully adopt a housing element incorporating  
4 HCD's review, the City was required to send its draft to HCD by November 2, 2022.

5 27. The City missed this deadline. Instead, the City sent its initial draft sixth  
6 cycle housing element update for review by HCD on January 12, 2023.

7 28. The City therefore cannot legally adopt its housing element update  
8 before April 12, 2023.

9 29. Despite this, the City pursued a strategy of adopting its housing element  
10 update without waiting for HCD's review.

11 30. At a public hearing on January 9, 2023, the City's Planning Commission  
12 recommended the adoption of the housing element update.

13 31. At a public hearing on January 24, 2023, the City Council adopted the  
14 housing element update.

15 32. The apparent purpose of the City's strategy of adopting without waiting  
16 for HCD's review was to attempt to avoid the imposition of state law penalties for  
17 failing to timely adopt a housing element update. The staff report presented to the  
18 City Council explained the penalties for noncompliance:

19 Cities and counties face a number of new consequences for not having a  
20 certified Housing Element. Under legislation enacted in recent years, if a  
21 city does not comply with State housing law, HCD may refer the agency  
22 to the Attorney General for action. Significant fines may be imposed. A  
23 court finding a Housing Element inadequate may limit local land use  
24 decision-making authority until the jurisdiction brings its Housing  
Element into compliance, or local governments may lose the right to  
deny certain projects.

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

28 34. Californians is currently engaged in a statewide effort to enforce both the

1 substantive requirements and the deadlines in state housing element law, for the sixth  
2 housing element update cycle. As part of this effort, it has contacted approximately  
3 80 cities to address concerns about their compliance with the law. Since April 2022,  
4 Californians has filed over a dozen lawsuits to enforce housing element law.

5 35. For cities that did not timely submit an initial draft sixth cycle housing  
6 element update to HCD, Californians’ approach involves contacting each city along  
7 with other pro-housing non-profit groups. Each city is offered a compromise whereby  
8 the non-profit groups agree to delay litigation in exchange for an acknowledgment by  
9 the city of certain state law penalties that apply due to the failure to timely adopt an  
10 updated housing element.

11 36. On December 16, 2022, along with other non-profit groups, Californians  
12 contacted Adam McGill, the City Manager of the City, to threaten litigation and offer  
13 this compromise. The City did not respond to accept the compromise.

14 37. On January 23, 2023, Californians contacted the City Council along with  
15 other non-profit groups and demanded that the City delay adoption until at least April  
16 12, 2023, 90 days after the City submitted its draft housing element to HCD.

17 **FIRST CAUSE OF ACTION**

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

20 38. Californians incorporates and realleges all of the foregoing paragraphs.

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

24 40. Pursuant to Government Code Sections 65587 and 65751, an action to  
25 challenge the legal adequacy of a housing element or compliance with housing  
26 element deadlines shall be brought under Code of Civil Procedure Section 1085.

27 41. Californians is an interested party for the purposes of these statutes.

28 42. The City was required to submit its draft housing element update to HCD

1 for review at least 90 days prior to adoption.

2 43. The City was required to consider HCD’s findings following its review  
3 prior to adopting the housing element update.

4 44. Because the City did not comply with these requirements, its housing  
5 element does not substantially comply with state law and the City is subject to an  
6 action under Government Code Sections 65587 and 65751.

7 45. Californians has no available administrative remedies.

8 46. Californians has no plain, speedy, or adequate remedy at law.

9 47. Accordingly, Californians is entitled to a writ of mandate.

10 **PRAYER**

11 WHEREFORE, Petitioner prays for relief as follows:

12 1. A writ of mandate (1) directing the City to rescind the January 24, 2023  
13 resolution of the Novato City Council adopting the City’s sixth cycle housing  
14 element, and (2) directing the City to adopt a sixth cycle housing element update  
15 pursuant to the schedule set forth in Government Code Section 65754.

16 2. An injunction or other order under Government Code Section 65755.

17 3. A declaration that:

18 a. The January 24, 2023 resolution of the Novato City Council  
19 adopting the City’s sixth cycle housing element was invalid and  
20 void when adopted and is of no further effect;

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

27 c. The City is not permitted to use the provisions in subdivision (d)(1)  
28 or (d)(5) of Government Code Section 65589.5 to disapprove a



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housing development project that qualifies for approval under 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: January 24, 2023

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 am employed by and 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 24, 2023 at Los Angeles, California.



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Matthew P. Gelfand