

1 CALIFORNIANS FOR HOMEOWNERSHIP, INC.
2 Matthew P. Gelfand (SBN 297910)
3 matt@caforhomes.org
4 Allyson H. Richman (SBN 339822)
5 allyson@caforhomes.org
6 525 S. Virgil Ave.
7 Los Angeles, California 90020
8 Telephone: (213) 739-8206
9 Facsimile: (213) 480-7724

Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

10 Attorneys for Petitioner,
11 Californians for Homeownership, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF CONTRA COSTA**

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

Case No. N23-0178

Petitioner,

**VERIFIED PETITION FOR
WRIT OF MANDATE**

v.

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

18 CITY OF RICHMOND,

Respondent.

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. Richmond 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.

CALIFORNIANS FOR HOMEOWNERSHIP, INC.
LOS ANGELES, CA

PARTIES

1
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 Richmond 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 Richmond pursuant
12 to 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
19

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.

24 ² *Id.* at 27.

25 ³ *Id.* at 3, 48-50.

26 ⁴ 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.

⁵ 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 December 9, 2022.

7 28. The City therefore cannot legally adopt its housing element update
8 before March 9, 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 5, 2023, the City's Planning Commission
12 recommended the adoption of the housing element update. On information and belief,
13 the City did not comply with Government Code Sections 65353(a) and 65090 in
14 noticing this hearing.

15 31. At a public hearing on January 24, 2023, the City Council adopted the
16 housing element update. On information and belief, the City did not comply with
17 Government Code Sections 65355 and 65090 in noticing this hearing.

18 32. The purpose of the City's strategy of adopting without waiting for
19 HCD's review, as stated by multiple City participants during the City Council's
20 meeting, was to attempt to avoid the imposition of state law penalties for failing to
21 timely adopt a housing element update.

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

25 34. Californians is currently engaged in a statewide effort to enforce both the
26 substantive requirements and the deadlines in state housing element law, for the sixth
27 housing element update cycle. As part of this effort, it has contacted approximately
28 80 cities to address concerns about their compliance with the law. Since April 2022,

1 Californians has filed over a dozen lawsuits to enforce housing element law.

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

8 36. On December 16, 2022, along with other non-profit groups, Californians
9 contacted Shasa Curl, the City Manager of the City, to threaten litigation and offer
10 this compromise. The City did not accept the compromise.

11 37. On January 23, 2023, Californians contacted the City Council along with
12 other non-profit groups and demanded that the City delay adoption until at least
13 March 9, 2023, 90 days after the City submitted its draft housing element to HCD.

14 **FIRST CAUSE OF ACTION**

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

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

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

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

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

25 42. The City was required to submit its draft housing element update to HCD
26 for review at least 90 days prior to adoption.

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

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

4 45. Californians has no available administrative remedies.

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

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

7 **PRAYER**

8 WHEREFORE, Petitioner prays for relief as follows:

9 1. A writ of mandate (1) directing the City to rescind the resolution of the
10 Richmond City Council at its January 24, 2023 meeting, adopting the City's sixth
11 cycle housing element, and (2) directing the City to adopt a sixth cycle housing
12 element update pursuant to the schedule set forth in Government Code Section 65754.

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

14 3. A declaration that:

15 a. The resolution of the Richmond City Council at its January 24,
16 2023 meeting, adopting the City's sixth cycle housing element was
17 invalid and void when adopted and is of no further effect;

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

24 c. The City is not permitted to use the provisions in subdivision (d)(1)
25 or (d)(5) of Government Code Section 65589.5 to disapprove a
26 housing development project that qualifies for approval under
27 subdivision (d) of that section—that is, a project in which either (A)
28 at least 20 percent of the total units shall be sold or rented to lower

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.



Matthew P. Gelfand