

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> Thomas B. Mayhew (SBN 183539) Farella Braun + Martel LLP One Bush Street, Ste. 900 San Francisco, CA 94104 TELEPHONE NO: (415) 954-4400      FAX NO. <i>(Optional):</i> (415) 954-4480 E-MAIL ADDRESS <i>(Optional):</i> tmayhew@fbm.com ATTORNEY FOR <i>(Name):</i> Petitioner Housing Action Coalition	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME:	
PLAINTIFF/PETITIONER: Housing Action Coalition  DEFENDANT/RESPONDENT: City of San Mateo	
<b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</b>	CASE NUMBER: 24-CIV-03126

TO *(insert name of party being served):* City of San Mateo

**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: May 22, 2024

Thomas B. Mayhew \_\_\_\_\_  
(TYPE OR PRINT NAME)

▶  \_\_\_\_\_  
(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**ACKNOWLEDGMENT OF RECEIPT**

This acknowledges receipt of ***(to be completed by sender before mailing):***

1.  A copy of the summons and of the complaint.
2.  Other *(specify):* Civil Case Cover Sheet, Summons, Verified Petition for Writ of Mandate

***(To be completed by recipient):***

Date this form is signed:

\_\_\_\_\_   
TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
 ON WHOSE BEHALF THIS FORM IS SIGNED)

▶ \_\_\_\_\_   
(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
 ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
 Thomas B. Mayhew (SBN 183539)  
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 EMAIL ADDRESS: tmayhew@fbm.com  
 ATTORNEY FOR (Name): Petitioner HOUSING ACTION COALITION

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO**  
 STREET ADDRESS: 400 County Center  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: Redwood City, CA 94063  
 BRANCH NAME:

CASE NAME: Housing Action Coalition v. City of San Mateo

**FOR COURT USE ONLY**

**Electronically  
FILED**  
 by Superior Court of California, County of San Mateo

ON **5/21/2024**  
 By /s/ Hessen Ladcani  
 Deputy Clerk

<p><b>CIVIL CASE COVER SHEET</b></p> <p><input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$35,000)</p> <p><input type="checkbox"/> <b>Limited</b> (Amount demanded is \$35,000 or less)</p>	<p><b>Complex Case Designation</b></p> <p><input type="checkbox"/> Counter <input type="checkbox"/> Joinder</p> <p>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)</p>	<p>CASE NUMBER: <b>24-CIV-03126</b></p> <p>JUDGE: DEPT.:</p>
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*Items 1–6 below must be completed (see instructions on page 2).*

1. Check **one** box below for the case type that best describes this case:

<p><b>Auto Tort</b></p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p><b>Non-PI/PD/WD (Other) Tort</b></p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p><b>Employment</b></p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p>	<p><b>Contract</b></p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p><b>Real Property</b></p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p><b>Unlawful Detainer</b></p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p><b>Judicial Review</b></p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input checked="" type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p>	<p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p><b>Enforcement of Judgment</b></p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p><b>Miscellaneous Civil Complaint</b></p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p><b>Miscellaneous Civil Petition</b></p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): 1

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 21, 2024

Thomas B. Mayhew \_\_\_\_\_  
 (TYPE OR PRINT NAME)

  
 \_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
  - Medical Malpractice—Physicians & Surgeons
- Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36)
- Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease
    - Contract (*not unlawful detainer or wrongful eviction*)
  - Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case—Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ—Administrative Mandamus
  - Writ—Mandamus on Limited Court Case Matter
  - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
- Confession of Judgment (*non-domestic relations*)
- Sister State Judgment
- Administrative Agency Award (*not unpaid taxes*)
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint (*not specified above*) (42)
  - Declaratory Relief Only
  - Injunctive Relief Only (*non harassment*)
  - Mechanics Lien
  - Other Commercial Complaint Case (*non-tort/non-complex*)
  - Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO RESPONDENT:  
(AVISO AL DEMANDADO):**  
CITY OF SAN MATEO

**YOU ARE BEING SUED BY PETITIONER:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
HOUSING ACTION COALITION

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**Electronically  
FILED**  
by Superior Court of California, County of San Mateo

ON **5/21/2024**

By /s/ Hessen Ladcani  
Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):  
Superior Court of California, County of San Mateo  
400 County Center  
Redwood City, CA 94063

CASE NUMBER:  
(Número del Caso):  
**24-CIV-03126**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Thomas B. Mayhew, Esq. (SBN 183539)  
Farella Braun + Martel LLP  
One Bush Street, Ste. 900, San Francisco, CA 94104

DATE: **5/21/2024** Clerk, by /s/ Hessen Ladcani, Deputy  
(Fecha) **5/21/2024** **Neal I. Taniguchi** (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

1 Thomas B. Mayhew (State Bar No. 183539)  
tmayhew@fbm.com  
2 Charles J. Higley (State Bar No. 224617)  
cjhigley@fbm.com  
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6 Farella Braun + Martel LLP  
One Bush Street, Suite 900  
7 San Francisco, California 94104  
Telephone: (415) 954-4400  
8 Facsimile: (415) 954-4480

9 Attorneys for Petitioner  
HOUSING ACTION COALITION

10

11

SUPERIOR COURT OF THE STATE OF CALIFORNIA

12

COUNTY OF SAN MATEO

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HOUSING ACTION COALITION,

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Petitioner,

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vs.

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CITY OF SAN MATEO,

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Respondent.

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Case No. 24-CIV-03126

**VERIFIED PETITION FOR  
WRIT OF MANDATE**

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Petitioner Housing Action Coalition alleges as follows:

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1. On May 20, 2024, the City of San Mateo adopted its 2023-2031 Housing Element.

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The Housing Element as adopted violates state law for two major reasons.

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2. First, the sites where the Housing Element site inventory says that enough housing

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can be built under existing zoning laws are not realistically available for housing. There are

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existing businesses on those sites, many of them with long-term leases, and San Mateo does not

26

have substantial evidence that the existing uses are likely to discontinue to make the sites available

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for housing.

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3. Second, even for sites that are likely to be available, San Mateo systematically

Electronically  
**FILED**

by Superior Court of California, County of San Mateo

ON 5/21/2024

By /s/ Hessen Ladcani  
Deputy Clerk

1 overestimates how much housing will be produced. San Mateo failed to consider, for example,  
2 that even if the existing use of a property may discontinue during the next seven years, a property  
3 zoned as office or retail might be used to build a new office or retail establishment rather than  
4 apartments. By failing to adjust its estimates downward for the probability that even one site  
5 might turn into a non-residential use, or make other required adjustments under state law, San  
6 Mateo incorrectly claims that it has enough sites to meet its fair share of the regional need.

7 4. To enforce the important public interest in allowing the creation of new housing,  
8 particularly housing affordable to those with moderate and lower-incomes, Housing Action  
9 Coalition seeks a writ compelling the City of San Mateo to adopt a revised housing element.

10 **PARTIES**

11 5. Petitioner’s legal name is Bay Area Housing Advocacy Coalition, a 501(c)(4)  
12 nonprofit organization. The organization is customarily referred to as Housing Action Coalition  
13 (“HAC”) and so is suing under the name by which it is customarily known. The mission of the  
14 501(c)(4) arm of HAC is to address the Bay Area and California’s housing shortage, displacement,  
15 and affordability crisis by promoting the building of housing affordable to residents at all income  
16 levels. Petitioner has a direct and substantial beneficial interest in ensuring that the Respondents  
17 comply with state law requirements related to housing elements, land use, and zoning.

18 6. Respondent City of San Mateo is a city situated in San Mateo County.

19 **JURISDICTION, VENUE AND TIMELINESS**

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

22 8. The Court has personal jurisdiction over the City of San Mateo pursuant to Code of  
23 Civil Procedure Section 410.10.

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

26 10. This action is timely brought under Government Code Section 65009 because it is  
27 brought within 90 days of the City Council vote on May 20, 2024, adopting the 2023-2031  
28 Housing Element.

1 **STATUTORY BACKGROUND**

2 11. Local government control over zoning and housing has led to a housing supply and  
3 affordability crisis for the Bay Area and the State of California as a whole. Many jurisdictions  
4 have made it illegal to build apartments or even duplexes on most of their land, preferring to limit  
5 construction on most of the developed land to stand-alone, single family houses. Even for the  
6 areas of each city where apartments can be built, cities limit the height, the number of units, and  
7 otherwise make it less affordable and more difficult to build. By making it illegal, or even just  
8 more expensive, to build housing, local governments have helped create the housing crisis.

9 12. Like other cities, San Mateo has historically limited large parts of the City to the  
10 construction of single family homes, and even now, there are neighborhoods that seek to declare  
11 themselves “historic districts” to prevent this from changing. Like other cities, San Mateo has also  
12 sought to limit construction of apartment buildings, because of residents complaining of traffic, or  
13 crowding in the schools, or even just asserting that the buildings are “not harmonious with the  
14 character of the neighborhood.”<sup>1</sup>

15 13. Not everyone can afford to live in a stand-alone, single family house: far from it.  
16 Even families making more than \$100,000 per year cannot afford a stand-alone, single family  
17 house in San Mateo; the only kind of housing that can legally be built in much of the City.

18 14. Since 1991, San Mateo voters have – though more recently only by the thinnest of  
19 margins – repeatedly passed a law limiting the size of apartment buildings, thus requiring  
20 additional land just to build the same number of units, and increasing the cost to build the housing  
21

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22 <sup>1</sup> See *California Renters Legal Advocacy & Educ. Fund v. City of San Mateo*, 68 Cal. App.  
23 5th 820 (2021). In that case, a landowner requested the City of San Mateo to approve construction  
24 of a 10 unit apartment building, as permitted under the city’s zoning laws. After neighborhood  
25 opposition, the city applied a subjective rule about building aesthetics – requiring a standardless  
26 “transition” of heights from neighboring properties – to reject the application to build housing. To  
27 defend its actions, the City then argued that the state housing law was unconstitutional, claiming  
28 that local zoning decisions are only a matter of local concern, not of statewide importance. The  
Court of Appeal, like the California Legislature, rejected this argument, holding that “a shortage of  
housing in our state has led to escalating costs that for many have rendered shelter unaffordable,”  
and that “actions and policies of local governments limiting the approval of affordable housing  
[are] a partial cause of the ‘excessive cost of the state’s housing supply.’” *Id.* at 848-49.

1 that is needed.

2 15. The City of San Mateo is not alone in the Bay Area in making housing  
3 unaffordable through its laws, but the City of San Mateo’s zoning laws, including those enacted  
4 directly by its voters, contribute to the unaffordability of housing in the Bay Area.

5 16. State housing law places limits on this system of local control. To avoid allowing  
6 any one city to turn itself into an island that insists that new housing, particularly apartments,  
7 should only be built elsewhere, state housing law requires each city to conduct a detailed analysis  
8 of both the housing needs of its community and how it can meet its fair share of the regional need  
9 for housing, and to analyze whether local rules are unduly constraining the construction of  
10 housing. The document containing this analysis, and identifying programs and policies that the  
11 city intends to change to ensure that sufficient housing can realistically be built, is called the  
12 Housing Element.

13 17. San Mateo was assigned a Regional Housing Needs Allocation (“RHNA”) in 2021  
14 in accordance with state Housing Element law, showing what its fair share of the regional need for  
15 housing is. The RHNA allocation called for San Mateo to plan to accommodate<sup>2</sup> construction of  
16 the following units for the Sixth Cycle planning period of February 1, 2023 to January 31, 2031:

17

<b><u>Income level</u></b>	<b><u>Number of Units</u></b>	<b><u>Percentage</u></b>
Extremely low/very low income	1,777	25%
Low income	1,023	15%
Moderate income	1,175	17%
Above moderate	3,040	43%
Total	7,015	100%

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23 18. A key part of the Housing Element is the “site inventory”: a list of the parcels,  
24 acreage, applicable zoning, and existing use, that the city claims are realistic and available for  
25 housing under existing laws, with an estimate of how much of the need each site can meet. The

26 \_\_\_\_\_  
27 <sup>2</sup> The City is not obliged to build the housing. It is obliged to make it legal and practical to  
28 build, and to remove regulatory obstacles to construction of the needed housing units, on realistic sites.

1 site inventory is used to evaluate whether the city can meet its RHNA numbers at each level of  
2 affordability.

3 19. If the city cannot meet the RHNA numbers at any of the levels of affordability, it is  
4 required under state law to rezone additional sites to meet the city’s fair share of the regional need  
5 for housing, and to do so early in the planning period (for San Mateo, the deadline was by January  
6 31, 2024) so that there will be time for those who want to build housing to line up financing, get  
7 approvals, and build.

8 20. As the State Department of Housing and Community Development explained the  
9 purpose of the site inventory in 2020 in its Sites Inventory Guidebook:

10 Scarcity of land with adequately zoned capacity is a significant contributor to  
11 increased land prices and housing development costs. A lack of adequately zoned  
12 sites exacerbates the already significant deficit of housing affordable to lower-  
13 income households. . . . The site inventory enables the jurisdiction to determine  
14 whether there are sufficient adequate sites to accommodate the RHNA by income  
15 category. A site inventory and analysis will determine whether program actions  
16 must be adopted to ‘make sites available’ with appropriate zoning, development  
17 standards, and infrastructure capacity to accommodate the new development need.

18 21. Legal restrictions on land use are not the only obstacle to housing construction. For  
19 some sites, the biggest practical obstacle is that someone else is already using it, and does not plan  
20 to leave. Residential zoning is important but not sufficient to make a site realistic and available  
21 for housing: an existing use by a successful business with a long-term lease, for example, makes it  
22 unrealistic to expect that the site will be used to meet the regional need for housing during the next  
23 eight years.

24 22. State law requires analysis of the existing use of a property being listed on the  
25 inventory to make sure that only available sites count towards accommodating the regional need.  
26 Cities must provide a “description of the existing use” for each site that has an existing use under  
27 Government Code Section 65583.2(b)(3), and then, based on that information, to consider whether  
28 the site can accommodate the development of a portion of the RHNA, under Government Code  
Section 65583.2(c).

29 23. The existing uses described for each site under 65583.2(b)(3) are also required to  
be analyzed as follows:

1 (g)(1) For sites described in paragraph (3) of subdivision (b), the city or county  
2 shall specify the additional development potential for each site within the planning  
3 period and shall provide an explanation of the methodology used to determine the  
4 development potential. The methodology shall consider factors including the extent  
5 to which existing uses may constitute an impediment to additional residential  
6 development, the city's or county's past experience with converting existing uses to  
7 higher density residential development, the current market demand for the existing  
8 use, an analysis of any existing leases or other contracts that would perpetuate the  
9 existing use or prevent redevelopment of the site for additional residential  
10 development, development trends, market conditions, and regulatory or other  
11 incentives or standards to encourage additional residential development on these  
12 sites.

13 (g)(2) In addition to the analysis required in paragraph [g](1), when a city or county  
14 is relying on nonvacant sites described [in (b)(3)] to accommodate 50 percent or  
15 more of its housing need for lower-income households, the methodology used to  
16 determine additional development potential shall demonstrate that the existing use  
17 identified [under (b)(3)] does not constitute an impediment to additional residential  
18 development during the period covered by the housing element. An existing use  
19 shall be presumed to impede additional residential development, absent findings  
20 based on substantial evidence that the use is likely to be discontinued during the  
21 planning period.

22 24. Sites with existing uses are thus ineligible to be listed on the site inventory as  
23 meeting the regional need unless the city has “substantial evidence that the use is likely to be  
24 discontinued during the planning period.” *Id.* They are simply not available to meet the housing  
25 need.

26 25. The California Housing and Community Development Site Inventory Guidebook,  
27 issued in June 2020, provides the agency’s interpretation of the requirement of substantial  
28 evidence necessary to overcome the presumption in Government Code Section 65583.2(g)(2):

The housing element should describe the findings and include a description of the  
substantial evidence they are based on.

In general, substantial evidence includes facts, reasonable assumptions predicated  
upon facts, and expert opinion supported by facts. An example of substantial  
evidence would be a nonvacant site with a grocery store and with a building lease  
expiring in a year, and evidence that the store has entered into a lease to relocate to  
another site subsequent to the lease expiring.

Examples of substantial evidence that an existing use will likely be discontinued in  
the current planning period include, but are not limited to:

- The lease for the existing use expires early within the planning period,

- 1 - The building is dilapidated, and the structure is likely to be removed, or a
- 2 demolition permit has been issued for the existing uses,
- 3 - There is a development agreement that exists to develop the site within the
- 4 planning period,
- 5 - The entity operating the existing use has agreed to move to another location
- 6 early enough within the planning period to allow residential development
- 7 within the planning period.
- 8 - The property owner provide[d] a letter stating its intention to develop the
- 9 property with residences during the planning period.

10 If multiple sites make up a common existing use and the same factors affect each of  
11 the sites, the same findings can be used for each of the sites (e.g., an abandoned  
12 shopping mall with sites under common ownership that will not be restored to  
13 commercial use located in an area where there is recent residential development).  
14 The “substantial evidence” would indicate the existing use will not impede further  
15 residential development or that the existing use will be discontinued during the  
16 planning period. In this type of situation, use of the same findings for each of the  
17 multiple sites would be appropriate.

18 However, the same finding for multiple sites in a specific area may not be  
19 appropriate if their characteristics widely vary. For example, nonvacant sites with  
20 differing existing uses and lacking in common ownership, whether contiguous or  
21 located in the same general area, may not rely on a generalized analysis. While the  
22 sites may be located in an area with common economic issues, individual owners  
23 may not wish to sell their property or redevelop their site with residential uses. In  
24 addition, each site’s existing use, e.g., grocery store, retail shop, parking lot, and  
25 offices, may have lease agreements of different lengths of time or the owner may  
26 not wish to relocate or redevelop the site with a more intensive residential use. In  
27 this type of situation, use of the same findings for the multiple sites would not be  
28 appropriate.

26. Listing a site that is unavailable because it is being used by an existing business  
that is unlikely to discontinue its use soon is an improper attempt to avoid rezoning that would  
allow much-needed housing to be built, and to preserve a status quo that makes it illegal to build  
the housing that people need. This practice hurts the residents of San Mateo, the rest of the Bay  
Area region, and all of California.

27. Under Government Code Section 65583.2(c), a site inventory is required to  
“specify for each site the number of units that can realistically be accommodated on that site[.]”  
The number must be adjusted to account for land use controls, site improvements requirements,  
the realistic development capacity for the site, typical densities of existing or approved residential  
developments at a similar affordability level in that jurisdiction, and the current or planned

1 availability of utilities. Government Code § 65583.2(c)(2).

2       28. This requirement prevents cities from arbitrarily assigning unrealistic numbers to  
3 the sites on the inventory (thereby evading the obligation to rezone additional land) without  
4 evidence of the actual density of housing that has been pursued locally at each level of  
5 affordability, and without taking into account other factors that will affect how much housing is  
6 realistically likely to be produced.

7       29. One aspect of the realistic capacity calculation is that for sites that have “mixed”  
8 zoning – for example, where a project could either be an office building or a residential apartment  
9 building, or a combination of each – the capacity number must be adjusted to take into account the  
10 probability of a 100% non-residential development. As explained in the Housing and Community  
11 Development Site Inventory Guidebook:

12       Realistic development capacity for nonresidential, nonvacant, or overlay zoned sites

13       The capacity calculation must be adjusted to reflect the realistic potential for residential  
14 development capacity on the sites in the inventory. Specifically, when the site has the  
15 potential to be developed with nonresidential uses, requires redevelopment, or has an  
16 overlay zone allowing the underlying zoning to be utilized for residential units, these  
17 capacity limits must be reflected in the housing element.

18       . . . For example, if past production trends indicate that two out of three similar sites were  
19 developed for residential use, and one out of three similar sites was developed for  
20 commercial use, an initial estimate of the proportion of new development which is  
21 expected to be residential would be two-thirds, i.e., 0.67.

22       30. The site inventory and its capacity estimates at each level of affordability are also  
23 used throughout the 2023-2031 period for another important purpose. Under the law known as the  
24 “No Net Loss” rule, codified at Government Code Section 65863, the inventory and its estimates  
25 are used to ensure that, as sites are developed, the RHNA need will continue to be met at all levels  
26 of affordability. If a parcel on the inventory is rezoned at a lower level of density, or even  
27 develops with fewer units at any level of affordability, the No Net Loss rule requires a city to re-  
28 calculate its RHNA compliance, and to rezone additional land to address any shortfall. Thus,  
including invalid or unrealistic sites, or overstating a site’s ability to accommodate a portion of the  
need for housing, is of ongoing concern even if the site inventory would otherwise meet the need  
without including the invalid site or the invalid capacity estimate. Because of the No Net Loss

1 rule, the City should not be allowed to include on its Site Inventory sites that are ineligible for  
2 inclusion even if removal of that parcel alone would not reduce the inventory below the level  
3 required by its RHNA allocation.

4 **FACTS**

5 **A. The Inventory Improperly Includes Sites That Do Not Meet The Need For**  
6 **Housing Because Of Their Existing Uses.**

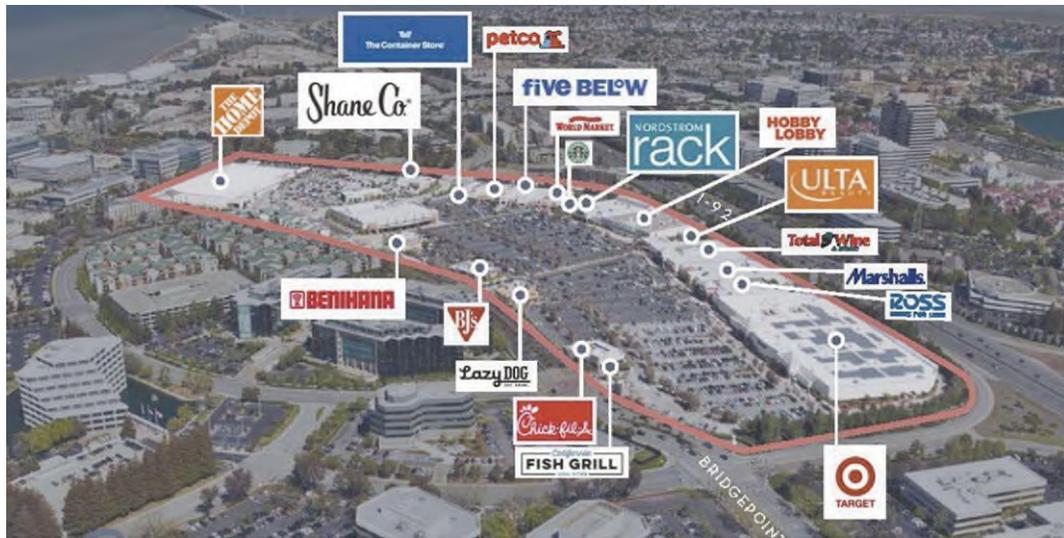
7 31. The City of San Mateo 2023-2031 Housing Element violates state law by including  
8 sites on the site inventory without substantial evidence that the existing use is likely to be  
9 discontinued during the planning period, and by failing to engage in the required analysis of the  
10 site inventory.

11 32. San Mateo has very few truly vacant sites on its inventory, and uses nonvacant sites  
12 to meet more than 50% of the lower-income need. Its listing of sites is thus subject to the  
13 additional evidentiary requirement of Government Code Section 65583.2(g)(2).

14 **1. The Bridgepointe Shopping Center Parking Lot (APN 035-466-100)**

15 33. The City unrealistically asserts that much of the Bridgepointe Shopping Center  
16 parking lot is likely to become housing before January 2031. The City’s site inventory counts 8.5  
17 acres of a 12.07 acre parking lot parcel as a housing site.

18 34. However, the shopping center parking lot is currently used for parking for  
19 customers of a large number of businesses that surround the parking lot, as shown in this graphic  
20 from an April 28, 2023 article in the San Mateo Daily Journal titled “Benihana, Chick-fil-A, more,  
21 coming to Bridgepointe Shopping Center in San Mateo[;] Leases include Nordstrom Rack and  
22 Five Below.”



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10        35.     HCD’s site inventory guidebook indicates that a lease expiring early in the  
11 planning period, with a plan for the tenant to relocate, is substantial evidence that the existing use  
12 is likely to discontinue so that the site is realistically available for housing.

13        36.     At Bridgepointe Shopping Center, however, the leases are not expiring early in the  
14 planning period, and none of the tenants show an intention to relocate. Many of the retail and  
15 restaurant uses that depend on the parking lot are new, and have long-term leases that run for most  
16 or all of the planning period. As of April 2023, literally every commercial space<sup>3</sup> in the center was  
17 leased:

- 18        •        A new Benihana restaurant is being opened on one side of the parking lot, in the  
19 place formerly occupied by Red Robin.
- 20        •        The ice rink opened back up in 2023.
- 21        •        A new Nordstrom Rack will open in fall 2024, according to an August 2023 press  
22 release by the property manager.
- 23        •        A new The Container Store is moving in, with a lease that runs 2023-2033.
- 24        •        Total Wine & More has a lease that runs 2017-2028.
- 25        •        Ulta Beauty has a lease that runs 2021-2032. It is expanding, according to an  
26 August 2023 press release by the property manager.

27 <sup>3</sup>        See <https://www.cbre.com/press-releases/cbre-fully-leases-large-open-air-shopping-center-on-the-san-francisco-peninsula> (last visited May 14, 2024).  
28

- 1 • Hobby Lobby has a lease that runs 2020-2029.
- 2 • Five Below has a lease that runs 2022-2034.
- 3 • Marshalls recently renewed its lease, according to the property manager.
- 4 • Other retail spaces on the southeast border of the parking lot are occupied by major
- 5 retailers including Petco, CostPlus, Ross, and Starbucks.
- 6 • BJ's, California Fish Grill, and Lazy Dog both arrived in 2022.
- 7 • A Chick-fil-A will be moving in soon.

8 Every one of these uses depends on the parking lot, and has lease rights to do so.

9 37. The City has not analyzed the existing leases to determine whether they create an  
10 obstacle to housing, as required by Government Code Section 65583.2(g)(1). Retail and  
11 restaurant leases, particularly for major retailers, typically include rights to have customers park in  
12 a shopping center's parking lot.

13 38. Use of the property is also limited because of a long-term agreement between the  
14 developer of the shopping center and Target, effective April 22, 1997, and titled "Operation and  
15 Reciprocal Easement Agreement – Bridgepointe, San Mateo, California" (the "1997  
16 Operation/Easement Agreement").

17 39. The 1997 Operation/Easement Agreement grants an easement to Target over the  
18 entire Bridgepointe Shopping Center parking lot, for use of Target's customers and employees.  
19 The easement lasts until December 31, 2056, with potential 10 year extensions after that. In  
20 addition, the owner of the "Toys Parcel" was granted a "perpetual" parking easement over a large  
21 portion of the lot.

22 40. In order to ensure that the entire center would remain as a retail shopping center,  
23 the parties to the 1997 Operation/Easement Agreement also agreed that "no Building or other  
24 improvement shall be constructed, maintained or used except for retail, Restaurant and incidental  
25 office and service establishments common to first-class shopping centers." This provision  
26 prohibits construction of residential housing on the site until December 31, 2056 at the earliest,  
27 and potentially beyond.

28 41. The 1997 Operation/Easement Agreement also provides that "Neither Developer

1 nor Target shall make any changes to the Common Area on its Parcel without the approval of the  
2 other Parties,” giving Target a right to block any changes to the parking lot that would affect the  
3 parking stalls and rows shown on the site plan included in the agreement.

4 42. The City has not analyzed the effect of the 1997 Operation/Easement Agreement as  
5 required by Government Code Section 65583.2(g)(1).

6 43. The City Council’s findings that the existing use of the Bridgepointe Shopping  
7 Center parking lot will discontinue during the planning period are not supported by substantial  
8 evidence. As a result, the existing use is presumed under Government Code Section 65583.2(g)(2)  
9 to be an obstacle to use for housing during the planning period, and the site should not have been  
10 listed on the inventory.

11 44. In fact, the evidence available to the City shows that the existing uses are not likely  
12 to discontinue. The City does not appear to have any indication that the owner plans to build a  
13 high density residential project on even a portion of the parking lot.<sup>4</sup> Nor does the City have any  
14 evidence that the leases with the major retailers and restaurants – which provide for rights to have  
15 customers park in front of their businesses – are not an obstacle to development during the  
16 planning period. Particularly given the evidence that these long-term leases run throughout the  
17 planning period, and that the 1997 Operation/Easement Agreement prohibits construction on the  
18 parking lot until after December 31, 2056, the City lacks substantial evidence that the regional  
19 need for housing, particularly for the lower-income category, is met by this parking lot.

20 45. The Bridgepointe Shopping Center parking lot does not realistically accommodate  
21 the need for 383 units of housing, including 154 lower-income units. The City’s site inventory  
22 should not include it as meeting the RHNA.

23 **2. The Atrium: 1900 South Norfolk Street (APN 035-391-090)**

24 46. The City unrealistically asserts that a three-story executive office building known  
25

26 <sup>4</sup> An earlier draft of the Housing Element had suggested that there was owner interest in  
27 redevelopment. In response to a Public Records Act request, no evidence of this was produced.  
28 On the new site inventory, the box for “Owner/Developer Interest” is left blank; the chart argues  
that the site is realistic solely because it is a parking lot with no structures on it.

1 as “The Atrium,” located at 1900 South Norfolk Street, along with its parking lot and small strip  
2 of land surrounding a PG&E substation, is likely to become housing before January 2031.

3 47. The office building is currently used by a large number of office tenants. The  
4 Housing Element does not perform any analysis of the current use, including whether existing  
5 leases would create obstacles to residential development of the site during the next eight years.

6 48. Publicly available information shows that the owner continues to sign long-term  
7 leases with new tenants, including one lease that extends until 2030, and another signed in 2023  
8 that extends until 2035. Despite this information, which the City received during public  
9 comments on the Housing Element, the City did not analyze whether existing leases present an  
10 obstacle to residential development during the 6th cycle as required by Government Code Section  
11 65583.2(g)(1) and (2), stating only that “[t]he owner has expressed interest in redeveloping the  
12 parcel via written communication.” *See* July 26, 2023 Housing Element, Appendix C at H-C-54.

13 49. However, based on the results of a recent Public Records Act request, the limited  
14 evidence of owner/developer interest is insufficient to conclude that the existing use of the  
15 property as an office building is “likely to discontinue” during the 6th cycle, or that the entire 8.18  
16 acre property should be projected to provide the 368 units, and 149 lower-income affordable units,  
17 claimed on the inventory.

18 50. A 2020 email shows that a developer was exploring the idea of building  
19 townhomes on a small portion of the parking lot: just 3 acres, for 55-60 townhome units, “while  
20 still preserving the office building and all of its associated tenants.” A lower-intensity  
21 development proposal like this is consistent with the similar townhome development at 1, 2, and 3  
22 Waters Park a few hundred feet away, but does not justify claiming that the entire 1900 S. Norfolk  
23 site would be redeveloped, particularly at the intensity claimed in the site inventory.

24 51. A second communication, directly from the owner Seagate Properties in April  
25 2022, sought a General Plan designation that would make residential development possible, but  
26 did not provide any timeline or state that the existing use would be eliminated during 2023-2031:  
27 “we . . . believe there will be opportunities now or during the 20-year period of the General Plan  
28 for the property to be redevelop[ed] with housing on the portions of the existing surface parking

1 lot. A Medium Mixed-Use designation will allow both office and housing to occupy the site.”

2 52. Neither of the communications provide substantial evidence that the existing office  
3 use of the site will discontinue, much less that it is likely to discontinue soon enough that housing  
4 can meet the 6th Cycle RHNA need. Both these communications *confirm* that the existing use  
5 will continue, rather than providing evidence that it will not; the expressions of owner interest do  
6 not justify claiming that all 8.18 acres will develop. Moreover, the continued signing of new long-  
7 term leases, including after the April 2022 letter, show by the owner’s current actions that housing  
8 is not expected to happen before 2031.

9 53. The Atrium office building site does not realistically accommodate the need for  
10 368 units of housing, including 149 lower-income units. The City’s site inventory should not  
11 include it as meeting the RHNA.

12 **3. Parkside Plaza Shopping Center: 1825 and 1850 S. Norfolk (APN 035-**  
13 **381-020 and -030)**

14 54. The City claims that the two parcels comprising the Parkside Plaza Shopping  
15 Center, located at 1825-1850 South Norfolk, will redevelop during the planning period.

16 55. However, the shopping center currently has a large number of retail tenants: Smart  
17 & Final, Pet Club, a Round Table Pizza, a large optometrist, dry cleaners, restaurants, a beauty  
18 supply, a martial arts school, “Fluff and Puff Dog Wash,” and others.

19 56. The Site Inventory does not describe any interest on the part of the owner of  
20 Parkside Plaza shopping center in redevelopment. There are existing uses that would prevent the  
21 owner from doing so anytime soon. The City has not attempted to learn information about the  
22 length of the leases, or analyze whether they pose an obstacle to the development of housing. The  
23 City also lacks substantial evidence that the existing uses are likely to discontinue before January  
24 31, 2031.

25 57. The Parkside Plaza shopping center site does not realistically accommodate the  
26 need for 299 units of housing, including 121 lower-income units. The City’s site inventory should  
27 not include it as meeting the RHNA.  
28

1                   **4.     Borel Shopping Center: 71-77 Bovet; 1750 El Camino Real**  
2                   **(APN 039-011-450, -460, -470, -480, -500, -510)**

3                   58.     The City has also listed the Borel Shopping Center site, even though it cannot  
4 realistically be redeveloped as residential during the planning period, and the City lacks substantial  
5 evidence that the existing uses will discontinue before January 31, 2031.

6                   59.     Tenants of the Borel Shopping Center have long-term leases that preclude  
7 development even if the owner is interested. As explained by the comment letter by Campaign for  
8 Fair Housing Elements in April 2022, the major tenants (CVS and 24 Hour Fitness) have long-  
9 term leases that will not expire until long after January 2031, and have indicated they do not want  
10 to leave. Further, Housing Action Coalition provided the City with a communication with CVS's  
11 Northern California Director of Real Estate confirming that CVS has no present intention or belief  
12 that it will move out before 2031. Likewise, Jack's Restaurant and Bar likewise has a long-term  
13 lease that lasts for most of the period (the lease runs from 2013-2029).

14                   60.     Thus, the City lacks substantial evidence that the site's existing uses are likely to be  
15 discontinued during the next eight years. It should not be able to use this site to satisfy the RHNA  
16 need for 213 total units, 86 of them lower-income.

17                   **5.     Borel Estate Building, 1690 (1700) S. El Camino Real (APN 039-012-**  
18                   **010)**

19                   61.     The City also listed the Borel Estate Building located at 1690 South El Camino  
20 Real, without evidence that the owner is likely to tear down the office building during the 2023-  
21 2031 period.

22                   62.     The Borel Estate Building (the entire block between Borel and Bovet) is a five-  
23 story office building with two banks (California Bank and Trust and Beacon Business Bank) on  
24 the first floor, and 32 offices on the second through fourth floors. Its tenants are primarily in the  
25 financial services industry, among other industries.

26                   63.     Although the City projects the development of 140 total residential units and 57  
27 lower-income units, the City lacks substantial evidence that this site is likely to redevelop as  
28 housing before January 2031, and has not analyzed the tenant leases (or even attempted to obtain  
them).

1                   **6.       Borel Place: 1650 Borel Place (APN 039-011-400)**

2           64.       The City lists Borel Place, an office building at 1650 Borel Place, but it is also not a  
3 realistic site for housing because of existing uses and leases.

4           65.       This office building is filled with professionals: law firms, accountancy practices,  
5 psychiatrists, mortgage brokers, opticians, and engineers. The City lacks evidence that these  
6 businesses will relocate before January 31, 2031.

7           66.       New leases continue to be signed; in 2022, one of its longtime occupants – a CPA  
8 firm (Galligan, Thompson & Flocas) – signed a new 10 year lease that will run to 2031. The City  
9 has not analyzed the effect of this lease as an obstacle to development.

10          67.       Further, the Site Inventory shows that no owner or developer interest has been  
11 expressed in redevelopment. The law requires the City to presume that this site’s existing use will  
12 continue, even if the City thinks this two-story building could or even should redevelop.  
13 Government Code § 65583.2(g)(2).

14          68.       The site’s existing uses and leases, and the City’s lack of substantial evidence that  
15 they will likely discontinue prior to January 31, 2031, preclude the City from listing this site as  
16 meeting the need for 113 residential units, 46 of them lower-income.

17                   **7.       The Elks and The Shriners: 229 W. 20<sup>th</sup> Ave.; 150 W. 20<sup>th</sup> Ave.**  
18                   **(Consolidated Site H; APN 039-030-220)**

19          69.       Similarly, the City provides no evidence for its projection that the San Mateo Elks  
20 Lodge will redevelop into 140 residential units (57 of them lower-income).

21          70.       The Benevolent and Protective Order of Elks, Lodge 1112 (“San Mateo Elks  
22 Lodge”), has been located at 229 W. 20th Street since 1954. The San Mateo Elks Lodge has a  
23 membership of over 1,100 as of early 2023. The Elks use their lodge to operate a popular  
24 swimming center for kids and families, hold crab feeds and other events in the meeting hall, and  
25 engage in fun activities and philanthropic works. It is not a realistic and available site for housing,  
26 contrary to the decision to list it on the site inventory.

27          71.       The only suggestion that the San Mateo Elks are not likely to continue their  
28 existing use of the Elks Lodge at 229 W. 20<sup>th</sup> Street is the statement on an earlier draft of the site

1 inventory that “Preliminary conversations with the owner to convert to residential have occurred.”  
2 *See* January 4, 2023 Housing Element, Appendix G. This does not provide substantial evidence  
3 that the San Mateo Elks will stop using their lodge in the next eight years. Indeed, the 2015  
4 Housing Element, when listing the same site, said the same thing, word-for-word: “Existing  
5 private member club. Preliminary conversations with the owner to convert to residential have  
6 occurred.”

7           72. Nothing has happened in the last eight years to suggest that “preliminary  
8 conversations” are substantial evidence on which to predict a likely discontinuation of the existing  
9 use, even if the more recent note is based on more recent “preliminary conversations,” instead of  
10 the “preliminary conversations” that took place eight years ago. No records were produced in  
11 response to our Public Records Act request showing that any conversation about likely  
12 redevelopment has taken place recently or at all.

13           73. A second private club is located just down the street at 150 W. 20<sup>th</sup> Street: the  
14 Shriners. The Shriners are likewise a longtime institution in San Mateo, and are likewise  
15 committed to philanthropy and social activities. The Shriners’ building is used in part for a day  
16 care center. One draft of the Housing Element indicates that “owners have considered mixed use  
17 with residential,” but provides no further details – and there is no substantial evidence -- indicating  
18 that the existing uses are likely to discontinue prior to January 31, 2031. *See* January 4, 2023  
19 Housing Element, Appendix C.

20           **8. Olympic Shopping Center (Consolidated Site AD: APN 042-242-050, -**  
21           **060, -070, -160, -180; 042-243-020, 042-244-040, -050; 042-245-040, -050,**  
22           **-060, -070, -080, -090, -100, -110, -120, -130; 042-263-010, 042-264-010)**

22           74. The City lacks substantial evidence that the Olympic Shopping Center will  
23 redevelop as residential during the 2023 to 2031 period.

24           75. This site, consisting of twenty parcels including the only grocery store in the  
25 neighborhood (Mollie Stone’s), a CVS, a bowling alley, a church, and a number of small retail  
26 businesses, is claimed to accommodate 120 units of housing affordable to those with lower-  
27 incomes. Many of the sites are separated by city streets.

28           76. The only basis for including this group of sites appears to be the claim that “The

1 owners have expressed interest in specific plan redevelopment,” which does not indicate that all of  
2 the parcels would be redeveloped, when it would occur, or indicate who said what to whom, and  
3 when.<sup>5</sup> Moreover, a “specific plan” would involve rezoning (and potentially removing the streets  
4 that break up the site).

5 77. The City’s Housing Element does not provide any plan or policy for a “specific  
6 plan” to take place for this area. A statement that someone would consider redevelopment if the  
7 City’s laws changed is not substantial evidence that the existing laws already adequately  
8 accommodate housing opportunities, or that redevelopment is likely to happen before January 31,  
9 2031 if no change is forthcoming.

10 78. There are six separate owners, and no indication that they are working together or  
11 have the agreement of the tenants to temporarily close during redevelopment.

12 79. As with Borel Square, Housing Action Coalition submitted to the City its  
13 communication with CVS’s Northern California real estate director, showing that CVS has no  
14 current intention or belief that it will close its San Mateo stores or move out so that its stores can  
15 be redeveloped as housing before 2031.

16 **9. Downtown Retail Block on East Fourth: Site N (Consolidated Site N:  
17 APN 034-144-220, 034-144-230, 034-144-240)**

18 80. The City lacks substantial evidence that the Downtown Retail Block on East Fourth  
19 will redevelop as 141 residential units (58 of which would be lower-income).

20 81. The City claims that three parcels will consolidate and be redeveloped in the heart  
21 of downtown: Consolidated Site N is a combination of (1) the long downtown block on East  
22 Fourth with Dean’s Produce, Equinox, First Bank, Jamba Juice, Noah’s Bagels, Starbucks Coffee,  
23 Chase Bank, a bicycle shop, and other restaurants and stores; (2) an old bank building now

24 \_\_\_\_\_  
25 <sup>5</sup> Here too, the concern about specificity is not idle. There are six separate owners. Carstens  
26 Realty owns most of the parcels, but CLC Investments, Sadigh Sassan, Shamco E LLC, Dubu,  
27 Inc., and San Mateo Investment Co. each own one. The City does not discuss or address whether  
28 the five are willing or interested in a joint project, though it lists each of them as having expressed  
interest in a specific plan. Without evidence of what makes consolidation likely, the smaller sites  
are deemed insufficient to accommodate the need for lower-income housing. *See* Government  
Code § 65583.2(c)(2)(A).

1 occupied by a Mattress Firm store, and (3) the parking lot on East Fifth across from Central Park,  
2 behind the shops on East Fourth.

3 82. The parking lot on East Fifth appears to be under separate ownership from the other  
4 parcels, and had proposed a project in 2013 called “Essex at Central Park.” But the owners have  
5 not moved it forward for the last five years (the last meeting about it was a Planning Commission  
6 meeting in August 2018), and the Housing Element site inventory indicates both that there is no  
7 “Pipeline Project” here (i.e., that the prior project was abandoned) and further, that the City has no  
8 indication of owner interest. Whatever enthusiasm for redevelopment the owner once had six  
9 years ago seems to have dissipated.

10 83. It would have been easy to determine if the owners of these parcels, who are known  
11 to City staff, are likely to develop their properties during this Housing Element cycle. But the City  
12 apparently has no indication that they are interested in building. Given the apparent disinterest in  
13 residential development by the owners, combined with a robust and thriving set of existing uses,  
14 the City cannot overcome the presumption that the existing uses will continue, and are an  
15 impediment to affordable housing. Government Code § 65583.2(g)(2).

16 **10. Pioneer Court: 2040 Pioneer Court; 2041 Pioneer Court; 2050 Pioneer**  
17 **Court; 2070 Pioneer Court; 2055 Pioneer Court; 2075 Pioneer Court**  
**(Consolidated Site I: APN 039-060-050, -100, -060, -070, -090, -080)**

18 84. The City also lacks substantial evidence that the six parcels on either side of  
19 Pioneer Court will redevelop as 63 residential units (25 of which as lower-income units).

20 85. The multi-unit office park at 2041 Pioneer Court has at least 6 tenants, including  
21 two general dentistry practices, a spa, an acupuncture center, a chiropractor, and a consulting firm.  
22 Across the street at 2050 Pioneer Court are the offices of a manufacturing company, and next to  
23 that at 2070 and 2075 Pioneer Court are a law firm and a financial services firm, respectively.

24 86. None of these proposed lots have evidence of owner/developer interest in  
25 converting to residential use during the planning period. These existing office uses are presumed  
26 to be an obstacle to residential development. The City does not have evidence that the different  
27 owners are even talking about building housing together; it appears that City staff arbitrarily  
28 assembled the list of parcels themselves in order to claim that the six properties would combine

1 together for a single housing development.

2 **11. Villa Plaza: 4060 S. El Camino Real (APN 042-241-180)**

3 87. The City lacks substantial evidence that this parcel, which includes Walgreens as  
4 one of its tenants, is likely to redevelop into 46 units of residential housing (19 of which as lower-  
5 income units).

6 88. The City has made no effort to determine whether current tenant Walgreens has a  
7 long-term lease, and whether that lease would preclude development at this site. Further, the site  
8 also contains smaller businesses. One business does have a publicly reported lease, signed in  
9 2021, that extends to 2031, precluding development even if the owner were interested.

10 89. Absent further analysis, the City lacks substantial evidence that this site is likely to  
11 redevelop, particularly in light of the known lease that extends for the entire planning period.

12 **12. Downtown Parking Lots: 5 N. San Mateo Dr., 123 Baldwin Ave., 117**  
13 **Baldwin Ave., 26 N. San Mateo Dr., 27 N. San Mateo Dr. (APN 032-**  
**312-250, -270, -150, -100, -070)**

14 90. The City lacks substantial evidence that the parcels listed as “downtown parking  
15 lots” at 5, 26, and 27 N. San Mateo, and 117 Baldwin, are likely to discontinue their existing use  
16 and redevelop into 44 units of residential housing, including 18 lower-income units).

17 91. These five parcels are currently used as parking lots. These parking lots are  
18 surrounded by medical office buildings that need parking for the comings and goings of doctors  
19 and patients; one of the lots is even owned by Sutter Health. These parking lots service, among  
20 other existing uses, a family medicine office, an Episcopal day school, two cosmetics stores, a  
21 dermatologist, a pediatrician, and an oral surgeon. While the site might make sense for housing,  
22 the City cannot say, without affirmative owner interest or any assessment of the market demand  
23 for the parking, that the existing uses of these parking lots are likely to cease. Sometimes surface  
24 parking lots turn into housing and sometimes not; when listing a property as meeting the need for  
25 lower-income units, the City is required to have substantial evidence that housing is the likely  
26 outcome before January 2031.

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**13. Conclusion: The site inventory improperly relies on nonvacant sites without analysis of the leases or existing use.**

92. Based on these site-specific examples, and other sites identified by public comments during the process, the City of San Mateo Housing Element violates state law because:

a. The Housing Element inventory lists sites that are not suitable for residential development as defined in 65583.2(a), does not identify sites that can be developed within the planning period, and does not identify sites sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels, all in violation of Government Code Section 65583.2(a);

b. The Housing Element fails to provide an adequate description of the existing use of each property, in violation of Government Code Section 65583.2(b)(3);

c. The Housing Element fails to determine the share of the regional housing need by income level that can be accommodated during the planning period based on the existing use, in violation of Government Code Section 65583.2(c);

d. The Housing Element fails to consider the extent to which existing uses may constitute an impediment to additional residential development for the sites on the inventory, including a site-specific analysis of the current market demand for the existing use and any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, in violation of Government Code Section 65583.2(g)(1); and

e. The existing uses are presumed to impede additional residential development, and the City lacked substantial evidence to support a finding that each of the existing uses are likely to be discontinued during the planning period. The City’s inclusion of the sites on the inventory, and the findings made by the City Council, are in violation of Government Code Section 65583.2(g)(2).

93. Indeed, San Mateo acknowledged that it had not engaged in the required site-by-site, evidence-based determination required by these laws. At the final Planning Commission meeting to recommend approval of the Housing Element, on April 23, 2024, in response to a

1 question about the information identified above (which had been included in a comment letter on  
2 behalf of Housing Action Coalition), City staff responded as follows:

3           It’s very hard to go out site by site and determine what would happen in each site.  
4           It would be very speculative. The market forces change. As we know, the Marriott  
5           site could be a potential housing site in the future, whereas other sites may not be  
6           potential sites in the future. So it’s really hard to determine site by site what would  
7           occur, whether it’s based on leases or what may actually be occurring on those sites  
8           currently. So we decided to use a more objective criteria that could be applied city-  
9           wide, without looking at individual sites.

10 Similarly, at the final City Council meeting, on May 20, 2024, City staff presented a slide  
11 claiming that “Use of redevelopment trends in the region can justify site selection without site-by-  
12 site analysis.”

13           94.       The City’s approach instead was to consider ten general factors which have been  
14 true of some properties that have redeveloped in the past, but without making a site-by-site  
15 determination. For example, the City reasoned that because the Bridgepointe Shopping Center  
16 parking lot parcel has no structures on it, and therefore a “0%” lot coverage, and a low ratio of  
17 improvement value to land value, and that housing has been built on sites used for parking in the  
18 past, that these factors were sufficient to show that Bridgepointe Shopping Center is appropriately  
19 listed on the inventory. However, this approach disregards state law, which requires a site-by-site  
20 assessment, including among other things (1) assessment of whether agreements (like the 1997  
21 Operation/Easement Agreement, and the numerous long-term tenant leases with major national  
22 retailers) pose an obstacle to development, (2) the market demand for the existing use (providing  
23 parking for the numerous businesses that surround and use the lot), and (3) that while generalized  
24 economic conditions might lead one owner to want to redevelop their parking lot, another owner  
25 may have no interest.

26           95.       Just because it can be “hard to go out site by site and determine what would happen  
27 in each site” doesn’t excuse the City from failing to do so. The Legislature has decided that the  
28 availability of land to build housing affordable to those in the lower-income categories is  
sufficiently important to require this extra level of analysis. By failing to make site-by-site  
determinations, even though comments from the public had pointed out these requirements over

1 the course of two years, the City of San Mateo violated state law.

2 **B. The Site Inventory Overestimates The Capacity To Accommodate The**  
3 **Regional Need.**

4 96. The San Mateo 2023-2031 Housing Element also overestimates the capacity of the  
5 sites to accommodate the regional need, in violation of Government Code Section 65583.2(a), (c),  
6 and (c)(2). By failing to properly analyze required statutory factors, the Housing Element inflates  
7 the site inventory capacity, and incorrectly claims compliance with the RHNA, particularly in the  
8 lower and moderate income categories.

9 97. One major issue is that the capacity numbers are not adjusted to take into account  
10 the zoning of the sites: specifically, that while they are zoned for residential development, they  
11 are also zoned to allow 100% nonresidential uses, such as commercial or office uses. Even if the  
12 existing use discontinues and the site is redeveloped, there is a probability that a site in a  
13 commercial or office zoning district will develop as a nonresidential use. The City was required to  
14 take this probability into account and adjust its estimates downward.

15 98. In the January 2023 Housing Element adopted by the City, the City specifically  
16 analyzed the percentage of sites that would be expected to develop as nonresidential projects in  
17 zoning districts where 100% nonresidential uses are permitted, by looking at recent history. At  
18 table 5 of the original Housing Element, the City determined that 78% of projects (and 75% of the  
19 acreage) from 2017-2022 had included residential – but that 5 out of 23 (22%) had not.

20 99. The City was well aware of what to do with this information, and even described  
21 what it should do when it initially adopted the 2023-2031 Housing Element in January 2023. It  
22 wrote: “Since historically 78% of the commercial zoned sites included housing, the State  
23 guidance is to extrapolate the trend by multiplying the 78% probability” by the realistic capacity.  
24 See January 4, 2023 version of Housing Element at H-31. However, the adopted draft did not do  
25 this.

26 100. After public comments and comments from HCD pointed out that the City should  
27 adjust its capacity estimates downward based on this data, the City changed the draft.  
28 Unfortunately, the change was not to correctly adjust the capacity estimates downward. Instead,

1 the City changed the draft by simply deleting table 5 (the one showing that 78% of projects had  
2 been 100% nonresidential). The City instead substituted a statement that “90% of projects in the  
3 last five years located in commercial or mixed-use zones have included a residential component.”

4 101. San Mateo should have adjusted its capacity estimates downward to account for  
5 the fact that between 10% and 22% of projects (depending on the time period referenced) have  
6 developed as entirely nonresidential because the zoning allows for new 100% commercial and  
7 office uses. However, it did not make this adjustment as Government Code Section 65583.2(c)(2)  
8 requires.

9 102. In addition, the current version’s 90% residential development statistic ignored  
10 information in the City’s possession about other nonresidential projects showing that there  
11 continues to be demand for nonresidential projects in the City, which creates competition for the  
12 scarce resource of available redevelopment sites.

13 103. The Housing Element also fails to account for the probability that even a project  
14 that makes its way through the entitlement process may then fail to result in housing because of  
15 supervening factors. The City has direct and recent experience with this fact. The Concar Passage  
16 project has been repeatedly delayed, and the proponent has not even exercised options to purchase  
17 all of the parcels. Meanwhile the current owners have reportedly entered into new leases with the  
18 existing occupants, delaying the potential for housing. Yet even after HCD instructed the City to  
19 consider “drop-out” rates, the Housing Element fails to analyze whether its capacity adjustments  
20 should be adjusted downward to reflect the realistic capacity of the sites to actually meet housing  
21 need. Housing projects that stall after making it only partially through the process do not meet the  
22 need.

23 104. The City also used a single estimate for every site, without taking into account site-  
24 specific constraints as required. For example, at the Atrium office building site, a portion of the  
25 site is a small strip of land between a PG&E substation and Borel Creek/Seal Slough, which limits  
26 the usefulness of that portion of the site. In addition, there are site-specific height limits at that  
27 site because the site is bounded on two sides by the Highway 92/101 interchange. The Housing  
28 Element fails to analyze these site-specific constraints in projecting 368 units for the Atrium site;

1 instead it projects the units based on the same approach of multiplying the maximum zoning  
2 density times 90% as it does for every other site zoned office or commercial.

3 105. The Housing Element fails to engage in any analysis of site-specific constraints, as  
4 required, or discussion or adjustment based on height limits, required setbacks, and other land use  
5 rules. This is in violation of Government Code section 65583.2(c)(2), which states that the city’s  
6 unit calculation “shall be adjusted as necessary, based on the land use controls . . . [and] the  
7 realistic development capacity for the site . . . .”

8 106. The Housing Element also fails to analyze governmental constraints on housing  
9 development, as described in the April 23, 2024 comment letter of California Housing Defense  
10 Fund.

11 107. The Housing Element also fails to calculate or adjust the number of units  
12 appropriately assigned to each category in light of the “typical densities of existing or approved  
13 residential developments at a similar affordability level in [the] jurisdiction,” as required by  
14 Government Code Section 65583.2(c)(2). For a big project like the Hillsdale Mall site, for  
15 example, the typical density of lower-income units is the inclusionary level required under City  
16 law, but the typical number of moderate income units is zero. The owner of the Hillsdale Mall site  
17 has commented on the Housing Element and indicated that estimating 180 units affordable to  
18 those with moderate incomes is not in keeping with its plans for the site, but the City decided not  
19 to adjust the number to take into account either typical densities at this level of affordability or  
20 what the owner itself was saying about its development plans.

21 108. After accounting for the removal of parcels ineligible for inclusion in the City’s  
22 Housing Element, and correctly adjusting its capacity estimates, the City was legally required to  
23 engage in rezoning to meet its RHNA allocation. *See* Gov. Code § 65583(c)(1)(A). By failing to  
24 do so, it violated state law.

25 **FIRST CAUSE OF ACTION**

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

28 109. HAC incorporates and realleges all of the foregoing paragraphs.

110. Under Government Code Section 65587, any interested party may bring an action

1 to determine whether all or part of a housing element conforms to the statutory requirements.

2 111. Pursuant to Government Code Sections 65587 and 65751, an action to challenge  
3 the legal adequacy of a housing element shall be brought under Code of Civil Procedure Section  
4 1085.

5 112. HAC is an interested party for the purposes of these statutes.

6 113. The City's housing element does not substantially comply with state law and the  
7 City is therefore subject to an action under Government Code Sections 65587 and 65751.

8 114. HAC has no available administrative remedies.

9 115. HAC has no plain, speedy, or adequate remedy at law.

10 116. Accordingly, HAC is entitled to a writ of mandate and other associated relief  
11 relating to the finding that the housing element, or portions of it, are not legally adequate or in  
12 substantial compliance with state law.

13 **PRAYER**

14 WHEREFORE, Petitioner Housing Action Coalition prays for relief as follows:

15 1. A writ of mandate directing the City to adopt a revised housing element pursuant to  
16 Government Code Section 65754.

17 2. An order or judgment under Government Code Section 65755.

18 3. A declaration that:

19 a. The housing element adopted in January 2023, as further revised and  
20 adopted on May 20, 2024, does not substantially comply with state law;

21 b. From January 31, 2023 until the City complies with the Court's writ of  
22 mandate through the adoption of a housing element that substantially complies with state  
23 law, the City has not had a housing element that was revised in accordance with  
24 Government Code Section 65588; and/or

25 c. In evaluating its ability to meet the RHNA need for purposes of the No Net  
26 Loss statute, the city is not allowed to use invalid sites or invalid projections of site  
27 capacity.

28 4. Costs of suit.

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5. Attorneys' fees under Code of Civil Procedure Section 1021.5 or as otherwise allowed by law.

6. Such other and further relief as the Court deems just and proper.

Dated: May 21, 2024

Respectfully submitted,  
FARELLA BRAUN + MARTEL LLP

By:   
Thomas B. Mayhew

Attorneys for Petitioner  
HOUSING ACTION COALITION

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**VERIFICATION**

I, Corey Smith, am the Executive Director of Petitioner in the above-entitled action. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof to be true to my own knowledge or based on publicly available information.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification was signed on the 21<sup>st</sup> day of May, 2024 in San Francisco, California.



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Corey Smith