

1 XAVIER BECERRA
Attorney General of California
2 DANIEL A. OLIVAS
Senior Assistant Attorney General
3 JAMEE JORDAN PATTERSON
Supervising Deputy Attorney General
4 KIMBERLY R. GOSLING (SB No. 247803)
JEREMY BROWN (SB No. 269159)
5 Deputy Attorneys General
600 West Broadway, Suite 1800
6 San Diego, CA 92101
Telephone: (619) 738-9519
7 Fax: (619) 645-2271
E-mail: Kimberly.Gosling@doj.ca.gov
8 *Attorneys for Petitioner and Plaintiff*
Department of Housing & Community Development

***NO FEE PURSUANT TO
GOVERNMENT CODE § 6103***

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ORANGE
12 CENTRAL JUSTICE CENTER

13
14 **California Department of Housing and
Community Development,**
15
16 Petitioner and Plaintiff,
17
18 **v.**
19 **City of Huntington Beach; City Council of
Huntington Beach; and Does 1-50,**
20
21 Respondents and
Defendants.

Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY RELIEF**

22 **INTRODUCTION**

23 1. California’s housing crisis has reached historic proportions. As the Legislature has
24 found, “[t]he lack of housing . . . is a critical problem that threatens the economic, environmental,
25 and social quality of life in California,” and the housing that *does* exist is the most expensive in
26 the country. (Gov. Code, § 65589.5, subd. (a)(1)(A), (B).) This crisis is “hurting millions of
27 Californians, robbing future generations of the chance to call California home, stifling economic
28

1 opportunities for workers and businesses, worsening poverty and homelessness, and undermining
2 the state’s environmental and climate objectives.” (*Id.*, subd. (a)(2)(A).)

3 2. The failure of local governments to plan for the necessary housing supply has been a
4 key factor contributing to this crisis. To overcome this failure, the Legislature for years has
5 required local governments to include housing elements in their general plans. These housing
6 elements must, among other things, ensure that adequate housing is available to meet each
7 region’s housing needs for Californians of all income levels, including low and very low incomes.
8 Not all local governments have complied with this requirement. Respondent/Defendant the City
9 of Huntington Beach is one such city.

10 3. Petitioner/Plaintiff Department of Housing and Community Development (HCD)
11 brings this action against the City of Huntington Beach and the City Council of Huntington Beach
12 (collectively, the “City”) to remedy this violation. It requests that the Court issue a writ ordering
13 the City to bring its housing element into compliance with State law, and issue a declaration that
14 the City has abrogated its planning obligations.

15 **PARTIES**

16 4. HCD is a public agency of the State of California. (Gov. Code, § 12804.) Among
17 other things, HCD is responsible for developing housing policy and building codes, for regulating
18 manufactured homes and mobile home parks, and for enforcing state housing laws—including
19 laws regarding housing elements—in a manner that meaningfully and positively impacts the
20 provision of housing in all communities across the State.

21 5. The City of Huntington Beach is a municipal corporation formed and existing under
22 the laws of the State of California, of which it is a political subdivision.

23 6. The City Council of Huntington Beach is the elected governing body of the City of
24 Huntington Beach. It is the legislative body charged under Government Code section 65300 with
25 responsibility for adopting a general plan, including a housing element, for the physical
26 development of the City of Huntington Beach.

27 7. HCD is unaware of the true names and capacities of respondents and defendants
28 DOES 1 through 50 (the “Doe Respondents”), who are therefore sued by fictitious names

1 pursuant to Code of Civil Procedure section 474. HCD alleges on information and belief that
2 each such fictitiously named Doe Respondent is responsible or liable in some manner for the
3 events and happenings referred to herein, and HCD will seek leave to amend this Petition and
4 Complaint to allege their true names and capacities after the same have been ascertained.

5 VENUE AND JURISDICTION

6 8. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
7 sections 187, 1060, and 1085.

8 9. Venue is proper in this Court because the City is located in Orange County and the
9 violations of law alleged herein occurred in Orange County.

10 BACKGROUND AND FACTUAL ALLEGATIONS

11 **Housing Elements and the Planning Process**

12 10. The Legislature has declared that “[t]he availability of housing is of vital statewide
13 importance, and the early attainment of decent housing and a suitable living environment for
14 every Californian . . . is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)
15 California law requires that all local governments adequately plan to meet the housing needs of
16 everyone in the community, at all economic levels.

17 11. To meet this requirement, every city and county must adopt and periodically update a
18 housing element as part of its general plan. (See Gov. Code, §§ 65302, subd. (c), 65580, *et seq.*)
19 The law mandating this adoption and periodic update is known as “Housing Element Law.” (*Id.*,
20 § 65580, *et seq.*) California’s Housing Element Law acknowledges that, for the private market to
21 adequately address the housing needs and demand of Californians, local governments must adopt
22 plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing
23 development, especially for a locality’s lower-income households and workforce. As a result,
24 housing policy in California rests largely on the effective implementation of the housing element
25 contained in the local general plan.

26 12. The housing element is a roadmap for housing development in a given community.
27 The housing element must identify and analyze existing and projected housing needs, and must
28 include “a statement of goals, policies, quantified objectives, financial resources, and scheduled

1 programs for the preservation, improvement, and development of housing.” (Gov. Code,
2 § 65583.) The housing element must also “identify adequate sites for housing” and “make
3 adequate provision for the existing and projected needs of all economic segments of the
4 community.” (*Ibid.*) Each housing element is also subject to review by HCD, as discussed
5 below.

6 13. A local jurisdiction’s housing element must be updated periodically to ensure
7 compliance with California’s Housing Element Law. (Gov. Code, § 65588.) Jurisdictions can
8 opt to update their housing elements every five years or every eight years. (See *id.*, subd. (e)(3).)
9 Each five- or eight-year cycle is known as a “planning period.” (See *id.*, subd. (f)(1).)

10 14. The process of updating a housing element begins with HCD’s determination of a
11 Regional Housing Need Allocation (RHNA) for the region for a given planning period. (Gov.
12 Code, § 65584, subd. (a)(1).) The RHNA is segmented by income levels. To arrive at the
13 RHNA, HCD starts with demographic population information from the California Department of
14 Finance and uses a formula to calculate a figure for each region’s planning body, known as a
15 “council of governments” (COG). Each COG also uses its own demographic figures to calculate
16 the regional housing need. Each COG coordinates with HCD to arrive at a final figure, taking
17 into account factors not captured in the calculations. This final figure is the RHNA. (See *id.*,
18 § 65584.01.)

19 15. Once the RHNA is set, the COG is responsible for allocating the housing need among
20 all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each local
21 government must then prepare a housing element that, among other things, identifies adequate
22 sites to accommodate that jurisdiction’s fair share of the RHNA at each income level. (*Id.*,
23 §§ 65583, 65583.2.) Sites must be suitable for residential development and must be made
24 available during the planning period. (*Id.*, § 65583.2, subd. (a).) If a sufficient quantity of
25 adequate sites is not currently available, the housing element must commit to identifying and
26 rezoning additional sites within three years from the date of adoption. (*Id.*, §§ 65583, subd.
27 (c)(1), 65583.2, subd. (h).) The housing element must also accommodate any unmet portion of
28 the RHNA from the prior planning period. (*Id.*, § 65584.09, subd. (a).)

1 16. Each housing element must also evaluate governmental constraints on the
2 development of housing for all income levels, and must show local efforts to remove
3 governmental constraints that impede the local government’s ability to meet its share of the
4 RHNA. (Gov. Code, § 65583, subd. (a)(5).)

5 17. Each local government must submit a draft housing element to HCD before adoption.
6 (Gov. Code, § 65585, subd. (b)(1).) HCD must review the draft element and issue findings as to
7 whether the draft substantially complies with Housing Element Law. (*Id.*, subds. (b)(3), (d).)
8 After adopting the final housing element, the local government must again submit the element to
9 HCD, and HCD must again review and report its findings to the local government. (*Id.*, subds.
10 (g), (h).)

11 18. Under Chapter 370, Statutes of 2017 (“AB 72”), codified at Government Code
12 section 65585, subdivisions (i) and (j), HCD has authority to review any action or failure to act by
13 a local government that it determines is inconsistent with an adopted housing element or section
14 65583 of California’s Housing Element Law. This includes failure to implement program actions
15 included in the housing element. HCD may revoke housing element compliance if the local
16 government’s actions do not comply with state law.

17 19. AB 72 also authorizes HCD to notify the Office of the Attorney General of California
18 that the local jurisdiction is in violation of state law for noncompliance with, among other things,
19 California’s Housing Element Law.

20 20. Pursuant to Government Code section 65585, subdivision (i)(1)(A), HCD may take
21 any of the actions authorized by AB 72 after issuing written findings to the local government “as
22 to whether the action or failure to act substantially complies with [California’s Housing Element
23 Law],” and providing a reasonable time, no longer than 30 days, for the local government to
24 respond. (Gov. Code, § 65585, subd. (i)(1)(A).) HCD has satisfied this requirement here, and
25 has issued letters to the City dated June 23, 2015, and November 14, 2018, both of which noted
26 the City’s failure to comply with Housing Element Law. The City’s response to the
27 November 14, 2018 letter is discussed below.

28

1 **The Huntington Beach Housing Element and**
2 **The Beach and Edinger Corridors Specific Plan**

3 21. The City’s current planning period runs from 2013 to 2021. In 2013, the City
4 submitted a draft housing element for this planning period to HCD for review. HCD found that
5 the draft met the statutory requirements of California’s Housing Element Law.

6 22. The City adopted the housing element on September 16, 2013 (the “2013 Housing
7 Element”), and HCD then reviewed it. On November 12, 2013, HCD found that the adopted
8 2013 Housing Element was in substantial compliance with California’s Housing Element Law.

9 23. The compliance finding was based on the identification of sufficient housing
10 development capacity to meet the City’s RHNA, and effective programs to facilitate development
11 of housing affordable to lower-income households. Notably, the housing element’s inventory of
12 sites and programs relied heavily on capacity within the Beach and Edinger Corridors Specific
13 Plan (BECSP). In fact, the housing allocation necessary to meet the needs of the City’s lower-
14 income households and workforce was entirely accounted for on sites within the BECSP.

15 24. On May 4, 2015, however, the City adopted amendments to the BECSP that changed
16 the maximum number of allowable units in the BECSP to an amount less than the City’s
17 remaining RHNA. The adoption of these amendments fundamentally altered the inventory of
18 available sites, constituting a *de facto* change to the 2013 Housing Element’s available sites
19 calculation. The BECSP amendments changed development standards, reducing unit density by
20 requiring additional parking and restricting development flexibility by requiring a conditional use
21 permit. These actions posed constraints to the development of housing, particularly on sites
22 identified in the land inventory to meet the City’s remaining lower-income housing need.

23 25. On June 23, 2015, HCD sent the City a letter notifying the City that the amendments
24 to the BECSP changed the premises upon which HCD’s prior certification of the 2013 Housing
25 Element was based, thereby nullifying that prior certification.

26 26. HCD also explained in its June 23, 2015 letter that a housing element must be
27 amended when a local government decision changes substantive provisions of the housing
28 element upon which HCD relied in determining substantial compliance. Housing element drafts

1 and amendments must be submitted to HCD for review and commentary before formal adoption.
2 HCD therefore advised the City to immediately submit an amended housing element to HCD to
3 review for compliance with California’s Housing Element Law.

4 27. Shortly after HCD’s June 23, 2015 letter, the City began working in consultation with
5 HCD to prepare an amended and legally compliant housing element.

6 28. On July 31, 2015, while the City was working with HCD to amend the 2013 Housing
7 Element, the City was sued by affordable housing advocates and two individual plaintiffs who
8 argued that the BECSP Amendment was invalid due to its inconsistency with the 2013 Housing
9 Element. (See *The Kennedy Commission v. City of Huntington Beach*, Case No. 30-2015-
10 00801675, currently pending in the Superior Court of the State of California, County of Los
11 Angeles (hereinafter, “*Kennedy*”).) In its defense against the lawsuit, the City vigorously argued
12 that it was “actively working to amend its housing element to meet its RHNA goals.” (*Id.*, City’s
13 Opposition to Petition for Writ of Mandate, filed Oct. 29, 2015, at p. 1.) The City affirmatively
14 represented to the Court that it had held hearings, consulted with HCD and others, and submitted
15 a draft amendment to HCD. (*Ibid.*) The City also told the Court that, as a result of this
16 interactive process, the lawsuit was unnecessary and would soon be moot. (*Ibid.*) According to
17 the City, “[t]he Court may simply observe that the City is moving quickly to fulfill its statutory
18 obligations and withhold writ relief pending the City’s adoption of a new housing element.” (*Id.*,
19 at p. 12.)¹

20 //

21 //

22
23 ¹ On January 20, 2016, the Superior Court in *Kennedy* issued a writ of mandate
24 commanding the City to cease enforcing, administering, or implementing the BECSP amendment.
The Court stated that Government Code section 65454 required the BECSP to be consistent with
the City’s general plan. The City immediately appealed.

25 On May 26, 2016, the Court of Appeal issued an order staying the writ of mandate. On
26 October 31, 2017, the Court of Appeal reversed the Superior Court and remanded the matter on
the basis that charter cities are exempt from the consistency requirement of Government Code
section 65454, and the consistency requirement did not apply since the City never affirmatively
27 adopted it. (*The Kennedy Com. v. City of Huntington Beach* (2017) 16 Cal.App.5th 841, 851-59.)

28 The Court of Appeal denied the petitioners’ request for rehearing on November 20, 2017,
and the California Supreme Court denied the petitioners’ petition for review on January 17, 2018.
The case is now proceeding on remand to the Superior Court.

1 29. On January 29, 2016, HCD found that the draft amendment prepared by the City
2 would satisfy the requirements of California’s Housing Element Law when adopted and
3 submitted to HCD.

4 30. Despite the fact that HCD had found the draft amendment to be legally compliant,
5 despite every indication from the City to HCD that it was actively working to bring the housing
6 element into compliance, and despite the City’s numerous representations to the *Kennedy* Court
7 to the same effect, the City council voted unanimously to reject the amendment—General Plan
8 Amendment No. 15-001—at a March 7, 2016 hearing. Until that time, HCD had every reason to
9 believe, based on the City’s interactions with HCD staff and its representations to the Court, that
10 the City intended to adopt the amendment.

11 31. On November 14, 2018, HCD issued a notice of noncompliance in which it found that
12 the City’s housing element remained out of compliance with article 10.6 of Government Code
13 title 7, division 1, chapter 3 (“Article 10.6”); that the City failed to act in compliance with
14 Government Code section 65583 when it failed to approve an amended housing element; and that
15 the City violated Article 10.6 by failing to take action to bring the housing element into
16 compliance with applicable statutory requirements since the City Council’s vote on March 7,
17 2016.

18 32. On December 6, 2018, the City sent HCD a letter responding to the November 14,
19 2018 notice of noncompliance. The City did not commit to complying with its legal duty to
20 immediately bring the 2013 Housing Element back into substantial compliance. The City instead
21 proposed further delay, stating that it “will set forth a plan to obtain recertification from HCD”
22 only after the *Kennedy* lawsuit is resolved. The time for empty promises has come to an end.
23 The City should not be allowed to avoid its statutory obligations any longer.

24 //
25 //
26 //
27 //
28 //

1 **FIRST CAUSE OF ACTION**

2 **Writ of Mandate (Code Civ. Proc., § 1085)**

3 **[Against All Defendants]**

4 33. HCD incorporates by reference each and every allegation of the preceding
5 paragraphs.

6 34. Under California’s Housing Element Law, the City must ensure that its general plan
7 contains a legally compliant housing element.

8 35. The City has completely abdicated this duty. Based on the events alleged in
9 paragraphs 10 through 32 above, the City’s 2013 Housing Element violates Housing Element
10 Law, and the City has failed to enact an amendment bringing the 2013 Housing Element into
11 substantial compliance. Indeed, by refusing to adopt General Plan Amendment No. 15-001 on
12 March 7, 2016, and by, on information and belief, making no meaningful effort since then to draft
13 and adopt another amendment that would bring the 2013 Housing Element into substantial
14 compliance, the City has publicly and unequivocally violated its duty to comply with California
15 law.

16 36. These actions and failures to act by the City are arbitrary, capricious, entirely lacking
17 in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, an
18 abuse of discretion, and a failure to act as required by law.

19 37. Accordingly, a writ of mandate should issue ordering the City to bring the 2013
20 Housing Element into substantial compliance with California’s Housing Element Law (Gov.
21 Code, § 65580, *et seq.*) and to ensure that the 2013 Housing Element meets the City’s regional
22 housing needs goals by the end of the 2013 – 2021 planning period, as determined by HCD.

23 38. HCD has a beneficial interest in the issuance of such a writ, given its authority and
24 mandate to enforce substantial compliance with California’s Housing Element Law. Likewise,
25 the public at large, as well as the lower income residents and workforce in the City, have a
26 significant interest in ensuring that the City complies with the law.

27 39. HCD has exhausted all required administrative remedies, or is excused from
28 exhausting its remedies due to the futility of pursuing such remedies, among other things.

1 PRAAYER FOR RELIEF

2 WHEREFORE, HCD prays as follows:

- 3 1. For a writ of mandate ordering the City to bring the 2013 Housing Element into
4 substantial compliance with California’s Housing Element Law (Gov. Code, § 65580, *et*
5 *seq.*) and to ensure that the 2013 Housing Element meets the City’s regional housing
6 needs goals by the end of the 2013 – 2021 planning period, as determined by HCD.
7 2. For a declaration that the City’s 2013 Housing Element does not substantially comply
8 with California’s Housing Element Law (Gov. Code, § 65580, *et seq.*).
9 3. For costs and attorneys’ fees.
10 4. For any other relief the Court may deem appropriate.

11
12 Dated: January 25, 2019

Respectfully Submitted,

13 XAVIER BECERRA
14 Attorney General of California
15 JAMEE JORDAN PATTERSON
16 Supervising Deputy Attorney General

17 

18 KIMBERLY R. GOSLING
19 Deputy Attorney General
20 *Attorneys for Petitioner and Plaintiff*
21 *Department of Housing & Community*
22 *Development*

23
24
25
26
27
28
SD2018102333
82108051.docx