KENNETH A. STAHL (Bar No. 326495)
SAMANTHA CHEN (Bar No. 307155)
MILLER STARR REGALIA
A Professional Law Corporation
1331 North California Boulevard, Suite 600
Walnut Creek, California 94596
Telephone: 925 935 9400
Facsimile: 925 933 4126
Email: ken.stahl@msrlegal.com
samantha.chen@msrlegal.com

Attorneys for Petitioner YIMBY Law

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

UNLIMITED JURISDICTION

YIMBY LAW, Petitioner, v. CITY OF BURBANK, CITY COUNCIL OF THE CITY OF BURBANK, and DOES 1-25, inclusive, Respondents. PICKWICK INVESTMENT, LLC, Real Party in Interest.	Case No. VERIFIED PETITION FOR WRIT OF MANDATE (CODE CIV. PROC. §§ 1085; 1094.5; GOV CODE §§ 65913.4, 65589.5)

Petitioner YIMBY Law alleges as follows:

Introduction

1. The City of Burbank's ("the City") denial of a housing project with 96 homes ("the Project") proposed by Real Party Pickwick Investment, Inc. violated two important state housing laws designed to address California's severe housing crisis: the Housing Accountability Act

("HAA") and SB 35. The City denied the Project in bad faith, knowing full well that the denial would violate these state laws. And it did so despite the fact that the City is woefully behind on accommodating its share of the regional need for housing during this housing crisis.

2. The City knew that its denial would violate state housing law because it was repeatedly told by its own Community Development Department, its own City Attorney, and by the State Department of Housing and Community Development ("HCD") that the Project complied with state housing law and thus could not be denied.

3. According to the HAA and SB 35, if a housing development project complies with all of the City's applicable objective criteria and meets other eligibility criteria, or if there is substantial evidence that would permit a reasonable person to conclude that the project complies, the project cannot be denied unless a city makes very specific findings proving by a preponderance of the evidence that the project creates a serious and unavoidable health and safety hazard. Under SB 35 specifically, if the project meets all the eligibility criteria and the City does not make the required findings, the project is entitled to a streamlined, ministerial approval process. In this case, the Project did meet all of the eligibility criteria under both statutes, and the City did not make the required findings that the project created a serious and unavoidable health and safety hazard. Therefore, the City was prohibited from denying this Project.

4. The HAA and SB 35 were enacted precisely to prevent cities from abusing their discretion as City did in this case by ignoring its own objective criteria and rejecting a housing project that would address the state's severe housing crisis.

5. According to the HAA's comprehensive findings of fact, the shortage of housing in California has "reached a crisis of historic proportions." (Gov. Code § 65589.5(a)(2)(J).) The crisis has been caused in part by local governments disapproving housing projects without "adequate attention to the economic, environmental, and social costs" of those disapprovals." (Gov. Code §

65589.5(a)(1)(D).) It is for that reason that the HAA curtails municipal discretion to deny projects that meet their applicable, objective criteria.

6. While the HAA applies to all municipalities statewide, SB 35's streamlining provisions apply only to those jurisdictions who have a particularly poor record in approving housing. The City is among those jurisdictions who are failing to address their housing needs and are therefore subject to SB 35's streamlining requirements. Under the state's signature Regional Housing Needs Assessment law ("RHNA"), every city is required to accommodate its fair share of the regional need for housing. Over the last eight-year RHNA cycle from 2013-2021, the City fell woefully short of its RHNA goals, accommodating just 40% of its overall RHNA allocation. It is therefore subject to the most stringent curtailment of municipal discretion provided by SB 35.

7. The Project complies with all the City's applicable objective land use standards for streamlined ministerial approval processing under SB 35 and for approval under the HAA. City staff comprehensively reviewed the Project over months and recommended that the Project be approved. Staff correctly determined that the project was eligible for SB 35 streamlining and protected by the HAA. HCD likewise informed the City that the project met all applicable criteria and was eligible for SB 35 streamlining. Therefore, there is substantial evidence from which a reasonable person could conclude that the project meets all applicable standards for SB 35 streamlining and HAA protection.

8. Petitioner YIMBY Law ("YIMBY" or "Petitioner") has followed the Project closely and urged the City and City Council to approve the Project in accordance with state law.

9. Nevertheless, the Project was denied by the City Council of the City of Burbank ("City Council") for a variety of nebulous subjective reasons, including that the community where the project is proposed to be located is a "very special place," a "unique community," and a

"gem." These are not legally sufficient grounds for rejecting a project that is protected by SB 35 and the HAA.

10. In denying the project, the City Council failed to identify any criteria that would make the Project ineligible for the SB 35 streamlining process or the protections of the HAA. Nor did the Council identify any objective written public health and safety standard with which the Project failed to comply.

11. The City's denial violates SB 35 because the project was consistent with each of the objective planning standards in Gov. Code § 65913.4 (a) required for eligibility under SB 35, and the City failed to perform its ministerial duty to approve the Project pursuant to Gov. Code § 65913.4. The City's denial also violates the HAA because the project complied with all applicable objective land use requirements, and the City failed to meet its burden of identifying in written findings supported by a preponderance of the evidence both the existence of a specific adverse health and safety impact supported by objective written public health and safety standards, policies or conditions, and that any such impact could not feasibly be mitigated. (Gov. Code § 65589.5(j)(1).)

Parties

12. Petitioner YIMBY Law is a California non-profit organization that uses education and advocacy, including litigation, to ensure that cities comply with state housing laws such as RHNA, SB 35, and the HAA. Petitioner's mission includes increasing the accessibility and affordability of housing in California. Petitioner provided written comments to the Respondent prior to the denial of the project, a true and correct copy of which is attached hereto as **Exhibit A.** Petitioner is a "housing organization" explicitly authorized to bring suit under the HAA. (Gov. Code § 65589.5(k)(2).)

13. Petitioner has a beneficial interest in the outcome of the proceedings because its participation in litigation over wrongful denials of housing projects is in the public's interest and necessary to protect public rights and enforce a public duty, in this case specifically to ensure cities' compliance with SB 35 and the HAA. Petitioner brings this Petition on its own behalf and on behalf of others affected by Respondents' failure to comply with state law as alleged herein.

14. Respondent City of Burbank ("City") is a California municipal corporation located within the county of Los Angeles. It is the local agency whose decision is being challenged. Respondent City Council of Burbank ("City Council") is the governing body of Respondent City.

15. Pickwick Investment, LLC ("Pickwick") is a California limited liability company and a Real Party in Interest in this case. It is the owner and developer of the Property as described below. Pickwick is the project "applicant" as that term is used in SB 35 and authorized under the HAA to "bring an action to enforce" the HAA. (Gov. Code §§ 65913.4, 65589.5(k)(1)(A)(i).) Pursuant to Code of Civil Procedure section 382, Pickwick is an indispensable Real Party in Interest but cannot be joined as a petitioner in this action because Pickwick has filed its own action against the City, *Pickwick Investment, LLC v. City of Burbank, et al.*, Case No. 22STCP01756, regarding the wrongful denial of the Project. Petitioner seeks no relief against Pickwick.

16. Petitioner is not aware of the identities of respondent DOES 1-25, who are responsible for the acts and omissions alleged herein and that caused damage to Petitioner; therefore Petitioner will amend this Petition when the true identities of DOES 1-25 are ascertained.

17. Petitioner is informed and believe that at all times mentioned in this Petition, that all Respondents were the agents or employees of their co-Respondent, and in doing the things alleged in this Petition, were acting within the course and scope of that agency and employment.

Jurisdiction and Venue

18. This Court has personal jurisdiction over Respondents (Code Civ. Proc. § 410.10) and subject matter jurisdiction over each of the state law claims asserted herein.

19. Venue is proper in this Court because the entire controversy occurred in Los Angeles County and Respondents are situated in Los Angeles County. (Code Civ. Proc. §§ 392, 393(b), 394 & 395.)

20. Petitioner performed any and all conditions precedent to filing this action and have exhausted any and all available administrative remedies to the extent required by law. Petitioner provided written comments to the City Council prior to the denial of the Project.

21. Petitioner has a beneficial interest in compelling Respondents' duties as described herein. Petitioner exhausted the administrative remedies available to the extent they were required. Petitioner has no plain, speedy, or adequate remedy to challenge Respondents' acts described herein other than the relief sought in this Petition, and therefore writ relief is necessary in order to compel Respondents to perform its duty to approve code-compliant housing development projects.

Legal Background

The HAA

22. The state legislature initially enacted the Housing Accountability Act in 1982, finding that the inadequate supply of housing "is a critical problem that threatens the economic, environmental, and social quality of life in California." (Gov. Code § 65589.5(a)(1)A).)

23. The legislature has acted to strengthen the HAA several times in the last few years. (Stats. 2016 c. 420 (A.B. 2584); Stats 2017 c. 378 (A.B. 1515); Stats. 2017 c. 368 (S.B. 167); Stats. 2019 c. 654 (S.B. 330).). Among other changes, the law has been modified to allow housing organizations to file suit, to require cities to make findings supported by a preponderance of the

evidence before denying or shrinking housing development projects under certain circumstances, and to allow prevailing petitioners to recover reasonable attorney fees and costs.

24. In enacting the 2017 amendments, the legislature observed that the supply of housing in California had "reached a crisis of historic proportions." (Gov. Code § 65589.5(a)(2)(J).) The legislature reported, among others, the following findings:

- California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025; (Gov. Code § 65589.5(a)(2)(D).)
- California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions; Gov. Code § 65589.5(a)(2)(E).)
- The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent. Gov. Code § 65589.5(a)(2)(G).)

25. The legislature concluded that the shortage of housing was "hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives." (Gov. Code § 65589.5(a)(2)(A).

26. The legislature found that the crisis has been caused in part by "local governments that limit the approval of housing" and fail to pay "adequate attention to the economic, environmental, and social costs" of disapproving new housing (Gov. Code § 65589.5(a)(1)(D).)

27. In order to ensure that local governments do not inappropriately block new housing developments, the HAA imposes the following limitations on the ability of local governments to disapprove new "housing development projects," which include "mixed use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use." (Gov. Code § 65589.5(h)(2)):

28. For a project like the present one of 150 or fewer units, the local government must notify the applicant in writing within 30 days of the application being deemed complete of any applicable land use standards with which the project is not in compliance, and the reasons why the project is considered out of compliance. If the local government fails to provide the required documentation, the project must be deemed consistent with the applicable land use standard. (Gov. Code § 65589.5(j)(2)(A)(i).)

29. Under the HAA, a project must be deemed consistent with any applicable land use standard if "there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity." (Gov. Code § 65589.5(f)(4).) If there is any doubt or disagreement as to whether the project meets an applicable standard, that doubt must be resolved in favor of the project as long as there is substantial evidence that would permit any reasonable person to find that the project meets the standard. The Court may not give any deference to a jurisdiction's finding that the project is inconsistent with a particular standard, as is customary in ordinary land use cases.

30. When a project is consistent or deemed consistent with all "objective general plan, zoning, and subdivision standards and criteria" in place at the time the project was deemed complete, a city may only disapprove the project if it makes "written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:"

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete; and

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density. (Gov. Code § 65589.5(j)(1)(A); (j)(1)(B).)

31. The Legislature further stated its intent that the HAA should be interpreted "in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Gov. Code § 65589.5(a)(2)(L).)

32. Toward that end, the legislature has provided that in any action challenging the disapproval of a housing development project under the HAA, the local government shall bear the burden of proof that its denial conformed to all of the conditions specified in the HAA. (Gov. Code § 65589.6.)

SB 35

33. In 2017, the state legislature adopted SB 35, which requires a streamlined, ministerial approval process for eligible housing development projects. It was intended to "provide[] reforms and incentives to facilitate and expedite the approval and construction of affordable housing." (Gov. Code § 65582.1.) SB 35 provides that housing development projects that comply with various threshold criteria and certain objective planning standards are eligible for a streamlined, ministerial project approval process. (Gov. Code § 65913.4 (a).)

34. Under SB 35, like the HAA, a housing development project must be found consistent with the applicable, objective planning standards "if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." (Gov. Code § 65913.4 (c)(3).) Both the HAA and SB 35 completely reverse the deference traditionally afforded to local agencies in interpreting their zoning codes by requiring a court to find a project consistent with all applicable objective standards if there is substantial evidence that would allow any reasonable person to conclude that the project is consistent. Further, SB 35 must "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." (Gov. Code § 65913.4 (n).)

35. SB 35 only applies to local jurisdictions, like the City, that have made insufficient progress towards meeting their RHNA allocations. The RHNA process is the cornerstone of the state's effort to address its housing crisis. In short, the RHNA law requires cities and counties throughout the state to make plans to accommodate their regional share of the housing need at several different levels of affordability. (*See* Gov. Code, § 65580 et. seq.) Those cities that fail to make adequate progress towards accommodating their regional share are subject to SB 35 streamlining.

36. To help eliminate indiscriminate and arbitrary project denials motivated by politics, SB 35 and the HAA represent the state legislature's intent to divest local governments, especially local governments like the City who are not meeting their regional housing needs, of their discretionary authority to deny appropriate and qualifying housing development projects.

Factual Background

The City's Failure to Meet its Regional Housing Needs

37. In the 2013-2021 RHNA cycle, the City of Burbank was required to plan for 2,684 homes, comprised of 694 Very Low Income homes; 413 Low Income homes; 443 Moderate Income homes; and 1,134 Above Moderate Income homes.

38. During that time period, the City produced a total of only 1,081 homes (approximately 40% of its RHNA allocation), including 3 Very Low Income homes (0.4% of its RHNA allocation); 265 Low Income homes (64.1% of its RHNA allocation); 61 Moderate Income homes (13.7% of its RHNA allocation); and 752 Above Moderate Income homes (66.3% of its RHNA allocation).

39. Therefore, across the board, the City has failed to meet its RHNA goals. For that reason, the City is subject to the strictest SB 35 streamlining requirements, which mandate streamlining for projects with 10% affordable homes and meet the other eligibility criteria.

The Project

40. The Project is a 96-unit townhome style condominium project located at 921-1001 W. Riverside Drive in the City on a single 5.05-acre lot ("Property").

41. The Property is designated under Burbank's 2035 General Plan for Rancho Commercial land uses, and is zoned Commercial Recreational (C-R) in the City's municipal code.

42. The City's Burbank 2035 General Plan was adopted on February 19, 2013. The General Plan states that the Rancho Commercial land use designation permits "20 units per acre with discretionary approval." The General Plan further states that "[t]he Rancho Commercial designation is located in the unique Rancho Neighborhood that allows for the keeping of horses on single-family residential properties, and a variety of low-intensity multi-family residential and commercial uses."

43. Accordingly, the General Plan provides that residential uses, at a density of 20 units per acre, are permitted in the Rancho Commercial land use designation. The Project's density is consistent with this land use designation.

44. For properties zoned Commercial Recreation (C-R), the City's Municipal Code ("BMC") at § 10-1-2436.5, contains a consistency table indicating that "[i]n the [Commercial Recreation] zone, all uses shall be consistent with the maximum FAR and maximum residential density, as prescribed in the General Plan, as follows:..." BMC § 10-1-2436.5 then contains a chart which states that for a Rancho Commercial land use designation, the "maximum residential density" is "20 units/acre." A footnote to the table in BMC § 10-1-2436.5 indicates that the "maximum residential density" of "20 units/acre" is permitted with discretionary approval.

45. Accordingly, the BMC states that residential uses, at a density of 20 units per acre, are permitted in the Commercial Recreation zone. The project's density is consistent with this density provision.

46. Therefore, residential uses at a density of 20 units per acre are permitted for property with a Rancho Commercial land use designation and in a Commercial Recreation zone. The Project is consistent with these density provisions.

The Project's Application and Review Process

47. The Project was designed by Pickwick to be consistent with all applicable objective general plan and zoning standards, objective subdivision standards, and objective design review standards.

48. The project was also designed to meet all the eligibility criteria under SB 35. The Project sets aside 10 homes for low-income households, to create new housing opportunities for those traditionally excluded from homeownership. The Project would comply with SB 35's labor requirements by ensuring that the Project's construction would pay prevailing wages and employ a

skilled and trained workforce. (Gov. Code § 65913.4 (a)(8)(A)(ii) and (a)(8)(B).) All other eligibility criteria for SB 35 were also met.

49. Therefore, the project is eligible for SB 35 streamlining and the protections of the HAA.

50. City staff confirmed that the project is eligible for SB 35 streamlining and HAA protection.

51. On or around July 1, 2021, Pickwick submitted the Project's SB 35 Notice of Intent to Submit Application (the "SB 35 NOI") to the City. The SB 35 NOI included a project description and a SB 35 Eligibility Checklist, which discussed in detail the Project's compliance with each of the enumerated criteria for SB 35 eligibility. On July 30, 2021, the City's Community Development Department responded to Pickwick's SB 35 NOI with the City's SB 35 consistency analysis and a request for supplemental documentation and information in order to support Pickwick's claim that the Project was subject to SB 35. For each of the enumerated SB 35 submission criteria, the City's response letter either identified that the Project was "[c]onsistent" with SB 35's requirements, or that additional documentation and information were required to help the City make its determination.

52. The City's letter stated the Project was "[c]onsistent" with the requirement that the Project be located on "[a] site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use."

53. Between September and October 2021, Pickwick provided additional information and documentation to the City in order to supplement the SB 35 NOI.

54. On November 2, 2021, the City introduced an ordinance establishing a public oversight process that identifies the City Council as the City body having final ministerial design review and approval authority for all SB 35 applications. The ordinance created a process separate from City staff review that gave the City Council the authority to undertake ministerial design review and public oversight of all SB 35 applications.

55. Petitioner submitted a letter to the City Council prior to the introduction of the ordinance highlighting the City's existing ministerial approval process for SB 35 applications, which involves submitting applications to the City's Community Development Director and appeals to the City's Planning Board. Petitioner warned that designating the Council as the ministerial approval body for SB 35 applications would create a risk that the Council would violate SB 35 and the HAA, because the Council is a political body that typically makes decisions involving discretion, judgment and political considerations, and is not trained or experienced in evaluating projects according to their objective standard criteria or making decisions without personal judgment. A true and correct copy of Petitioner's letter to the City Council regarding this ordinance is attached hereto as **Exhibit B.**

56. Despite the Petitioner's opposition to the ordinance and the designation of the City Council as the ministerial approval body for SB 35 applications, the City adopted the ordinance on December 7, 2021.

57. On November 10, 2021, Fidel Herrera, a Senior Housing Policy Specialist with the California Department of Housing and Community Development ("HCD") sent an email to representatives of the City's Community Development Department regarding the Project's eligibility for SB 35 streamlining. The e-mail stated that "[b]ased on the information reviewed including the Burbank2035 General Plan, Burbank Municipal Code (BMC) and Article 24 Rancho

Master Plan zones, the Streamlined Ministerial Approval Process (SB 35) applies to the project at 921-1001 W. Riverside Drive."

58. On November 15, 2021, the Community Development Department responded to Pickwick's SB 35 NOI stating the Project application was complete and that the Project was "[c]onsistent" with each requirement of SB 35.

59. On February 23, 2022, HCD wrote to State Senator Anthony Portantino, who had inquired with HCD regarding the Project's eligibility for a streamlined, ministerial approval under SB 35. HCD's letter to Senator Portantino stated the Project is eligible for a streamlined ministerial approval process. HCD's letter also concluded that residential uses were permitted within the Property's zone and General Plan designation.

60. On February 24, 2022, Pickwick submitted its completed SB 35 Application for the Project to the City's Community Development Department, which included an application for a Vesting Tentative Tract Map (No. 83627) to facilitate the creation of the Project's for-sale, residential condominium units. SB 35 provides that a Vesting Tentative Tract Map application is also eligible for the ministerial approval process permitted under SB 35. (Gov. Code § 65913.4 (d)(2).)

61. The Project's SB 35 Application further identified that the Project would request a Density Bonus Law incentive to reduce a front yard setback, as was consistent with and permitted under SB 35, the HAA, and the BMC based on the Project's set aside of 10% of the Project's units for low-income households. (Gov. Code § 65913.4 (a)(4)(C); Gov. Code § 65589.5 (j)(3); BMC § 10-1¬635.)

62. Accordingly, neither the Project's request for a Vesting Tentative Tract Map nor the request for a Density Bonus Law incentive to reduce a front yard setback impacted the Project's

eligibility for the streamlined, ministerial approval process allowed under SB 35, or protection under the HAA.

63. The City's Community Development Department began its thorough review of the Project's SB 35 Application upon submission.

64. On or around March 23, 2022, the Community Development Department published an updated draft of the Burbank 2021-2029 Housing Element. The draft Housing Element counted the Project's proposed 96 units towards the City's RHNA obligations based on the assumption that the Project would be approved as a matter of ministerial duty due to its consistency with SB 35.

65. The City also scheduled the Project for a public hearing before the City Council to be held on April 18, 2022, despite the fact that SB 35's ministerial approval process does not require a hearing to be held for eligible projects.

66. Prior to the public hearing, members of the public pressured City Council to overrule the City's Community Development Department's SB 35 consistency determination. Members of the public submitted correspondence to the City Council urging the City to circumvent its legal obligations under SB 35. Public opposition coalesced around the unsupported and irrelevant claim that the Project posed a safety risk to horses stabled within the neighborhood.

67. Petitioner submitted a letter to the City Council prior to the public hearing advising the Council that the project was eligible for SB 35 streamlining and that a denial of the project would violate both SB 35 and the HAA because the project complied with all applicable objective standards and the city had no evidence that the project presented a serious and unavoidable health and safety hazard. The letter urged the Council to approve the Project and advised the Council of the Petitioner's intent to file suit if it did not.

The April 18, 2022 Public Hearing and Denial of the Project

68. After an extensive nine-month review process, and in preparation for the City Council hearing on April 18, 2022, City staff prepared a staff report for the Project. The staff report stated that the Project met all the eligibility criteria for the streamlined ministerial process under SB 35. It detailed how the Project would be consistent with each of the City's applicable objective standards. The report did not identify any concerns the staff had with the project. No land use or health and safety issues were identified.

69. City staff recommended that the project be approved because it qualified for SB 35 streamlined approval and protection under the HAA.

70. During the April 18, 2022 public hearing, Assistant Community Development Director Fred Ramirez and Planning Manager Scott Plambaeck provided a presentation to the City Council in which they detailed the Project's eligibility for streamlining under SB 35. Both staff members urged the City Council to ministerially approve the Project because the Community Development Department had determined that the Project met every requirement and was consistent with every objective standard required for eligibility under SB 35.

71. Instead, members of the City Council considered and discussed a pretextual theory that residential uses are somehow not permitted in either the Property's Rancho Commercial General Plan land use designation or Commercial Recreation zone. In fact, residential uses are permitted in both the General Plan land use designation for the property and the zoning for the property.

72. Comments by councilmembers at the hearing made clear that they were unconcerned with determining the project's eligibility for SB 35 streamlining or HAA protection, and were more concerned with subjective questions about neighborhood character that both SB 35 and the HAA prohibit cities from taking into consideration. In oral comments at the public hearing, City Councilmembers expressed concern that the Project would threaten the nature of the

neighborhood. Mayor Jess Talamantes states that the location of the Property is a "unique community" that is "very special," and that there are "not many around the country or even the state that have something like this." Councilmember Nick Schultz states that the community is "unlike any other neighborhood," that "Pickwick is unique and worth fighting for," and that it is a "treasure." Schultz further states that he shares the concern "on a personal level" about the "erosion of th[e] unique neighborhood." These are not objective standards that may be considered for SB 35 or HAA projects.

73. Rather than attempting to implement SB 35 in good faith, one City Councilmember lamented that SB 35 bills had stripped away local control. Councilmember Schultz stated that SB 35 is "a terrible bill" and that he wishes the bill was "constructed in a different way." He complained that it leads to an "erosion of local decision-making" and that he "truly wished" the Project could go through typical development review.

74. During the City Council's deliberations, councilmembers were fishing for theories they could use to deny the project. On one occasion a councilmember even said she "went down the rabbit hole" looking for a basis to deny the project. City staff, including the City Attorney, tried to dissuade the City Council from relying on unsupported theories to deny the Project.

75. In defiance of state law, the City Council unanimously denied the Project.

76. On April 25, 2022, the City published its denial resolution No. 22-29,310 (the "Denial Resolution") for the Project. The threadbare Denial Resolution adopted by the City Council evinces the lack of legal support for the denial. The Denial Resolution primarily relies on an erroneous theory that residential uses are not permitted at the Property. Further, the Denial Resolution repeats the baseless claim made by the Project's opponents that the Project would pose a safety risk for horses. A true and correct copy of the Denial Resolution is attached hereto as **Exhibit C**.

77. Neither the oral comments from the City Councilmembers nor the findings of denial identified any applicable objective standard with which the Project was inconsistent or with which it would not comply. Nor did the City Council identify any SB 35 threshold criteria that the Project failed to meet. The Council also did not identify any specific adverse health and safety impact based on an objective written public health and safety standard, policy or condition. Finally, the Council did not demonstrate that it was impossible to feasibly mitigate any impacts of the Project.

78. On May 9, 2022, Pickwick filed suit challenging the City's denial of the Project.

79. On May 24, 2022, HCD sent the City a Notice of Violation finding the City in violation of SB 35 for denial of the Project and requesting a response from the City before referring the matter to the California Office of the Attorney General.

FIRST CAUSE OF ACTION

(Petition For Writ of Mandate – Violation of SB 35)

(Gov. Code § 65913.4; Code Civ. Proc. §§ 1085, 1094.5)

80. Petitioner re-alleges and re-incorporates by reference all preceding allegations in their entirety, as if fully set forth herein.

81. Gov. Code § 65913.4 provides that a development project that satisfies the objective planning standards and requirements listed in Gov. Code § 65913.4(a) shall be "subject to a streamlined, ministerial approval process" and "is not subject to a conditional use permit."

82. The applicable objective planning standards are defined as "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal." (Gov. Code § 65913.4 (a)(5).)

83. Gov. Code § 65913.4 (c) provides that "a development is consistent with the objective planning standards specified in [Gov. Code § 65913.4] subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." This low threshold is designed to prohibit a local jurisdiction like the City from incorrectly interpreting or applying an objective planning standard in order to find a project noncompliant.

84. Gov. Code § 65913.4 (n) further requires that Gov. Code § 65913.4 "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply."

85. Gov. Code § 65913.4 "expressly limits local governments' authority over applications for development of affordable housing projects meeting the specified criteria..." (*Ruegg & Ellsworth v. City of Berkeley*, 63 Cal.App.5th 277, 299 (2021).)

86. The Project satisfied each of the objective planning standards in Gov. Code § 65913.4 (a) and all other requirements for eligibility under SB 35.

87. Real Party Pickwick provided the City with substantial evidence that would allow a reasonable person to conclude that the Project was consistent with each of the City's objective planning standards, as well as all other requirements for eligibility under SB 35, including numerous notifications; applications; support documents; attachments; and analyses and explanations.

88. The City's own Community Development Department correctly determined that the Project complied with the objective planning standards in Gov. Code § 65913.4 (a) as well as all other requirements for eligibility under SB 35. Staff's determination alone constitutes substantial evidence that would allow a reasonable person to conclude that the Project was consistent with each of the City's objective planning standards.

89. As part of this determination, City staff also concluded that both the Property's Rancho Commercial General Plan land use designation and Commercial Recreation zoning permit residential uses.

90. In the Denial Resolution for the Project, the City Council erroneously identified one objective planning standard with which it alleges the Project did not comply. The City Council's reliance on the planning standard was meritless.

91. Regardless of the Council's unsupported claim that the Project did not meet one planning standard, there is substantial evidence that would allow a reasonable person to conclude that the Project was consistent with each of the objective planning standards in Gov. Code § 65913.4 (a) required for eligibility under SB 35. Such substantial evidence includes but is not limited to: planning staff's determination that all applicable objective standards were met, HCD's determination that the project complied with all applicable objective standards, and the information and documents provided by Pickwick to establish eligibility for SB 35 streamlining.

92. The City had a ministerial duty to approve the Project.

93. The City failed to perform its ministerial duty to approve the Project pursuant to Gov. Code § 65913.4 when the City Council denied the Project on April 18, 2022.

94. Code of Civ. Proc. § 1085 provides that "[a] writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins..." Mandamus relief is available to compel a local government to perform a ministerial act that is prescribed by law. (*Ochoa v. Anaheim City Sch. Dist.*, 11 Cal.App.5th 209, 223-24 (2017).)

95. Therefore, Petitioner is entitled to a writ of mandate setting aside the City's denial and directing the City to ministerially approve the Project.

SECOND CAUSE OF ACTION

(Petition for Writ of Mandate – Violation of HAA)

(Gov. Code § 65589.5 (j); Code Civ. Proc. §§ 1085, 1094.5.)

96. Petitioner re-alleges and re-incorporates by reference all preceding allegations in their entirety, as if fully set forth herein.

97. The HAA limits a local agency's ability "to deny, reduce the density for, or render infeasible housing development projects..." (Gov. Code § 65589.5 (a)(2)(K).) Specifically, the HAA states that "[w]hen a housing development project complies with applicable objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time the application was deemed complete but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density," the local agency must make two findings. (Gov. Code § 65589.5 (j).) A housing development project shall be deemed compliant with any applicable standards "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project...is consistent, compliant, or in conformity." (Gov. Code § 65589.5 (f)(4).)

98. To deny a compliant project, the local government must first find that "[t]he housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density." (Gov. Code § 65589.5 (j)(1)(A).) Second, the local government must also find that "[t]here is no feasible method to satisfactorily mitigate or avoid the [specific] adverse impact....other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." (Gov. Code § 65589.5 (j)(1)(B).)

99. The HAA further requires that both of such findings be "supported by a preponderance of the evidence on the record..." (Gov. Code § 65589.5 (j)(1).) A local agency may not deny an eligible project without making the findings required by the HAA. (*Honchariw v. County of Stanislaus*, 200 Cal.App.4th 1066, 1081 (2011).) Further, the HAA is to "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Gov. Code § 65589.5 (a)(2)(L).)

100. Real Party Pickwick provided the City with substantial evidence that would allow a reasonable person to conclude that the Project was consistent, compliant, and in conformity with any applicable development standards, including numerous application materials; support documents; attachments; and analyses and explanations.

101. After an extensive period of review, City staff correctly determined that the project complied with all objective land use standards. The City's own Community Development Department correctly concluded that the Project was consistent, compliant, and in conformity with any applicable development standards and that the HAA applied to the Project.

102. Therefore, under Government Code section 65589.5(f)(4), the project must be deemed compliant with all objective land use standards because "there is substantial evidence that would allow a reasonable person to conclude" that the housing project is compliant.

103. The City did not notify the developer in writing within 30 days of the application being complete that there were any applicable objective land use standards with which the Project did not comply. Therefore, under Government Code section 65589.5(j)(2)(A)(i), the project must be deemed compliant with all applicable objective standards.

104. Because the Project complied or must be deemed to comply with all applicable objective land use standards, the City Council could only deny the project if it could prove through written findings supported by a preponderance of the evidence that the project would have a

specific, adverse impact upon the health and safety based on objective, identified written public health and safety standards, policies or conditions and that there is no feasible way to satisfactorily mitigate that impact.

105. The City's written findings do not prove by a preponderance of the evidence that the project causes a specific adverse health and safety impact.

106. The City is unable to meet its burden of proof as to either of the required health and safety findings.

107. The concerns raised in the findings of denial were pretextual.

108. Having failed to make the required findings as part of the Denial Resolution for the Project, despite repeated warnings from Petitioner, Pickwick and the City's own staff, the City Council failed to proceed in the manner required by law. Accordingly, Petitioner is entitled to an order or judgment compelling the City to comply with the HAA. (Gov. Code § 65589.5 (k)(1)(A)(ii).)

109. Further, the City Council willingly violated state law by concocting reasons for the denial that were frivolous and entirely without merit regarding the Project. The City further acted in bad faith by designating itself as the ministerial approval body under SB 35, knowing that it would not actually apply SB 35 in the intended ministerial fashion. Accordingly, the City acted in "bad faith" for purposes of the HAA. (Gov. Code § 65589.5 (k)(1)(A)(ii), (l).) Since the City acted in bad faith when it disapproved the Project, Petitioner is entitled to an order or judgment directing the City to approve the Project. (Gov. Code § 65589.5 (k)(1)(A)(ii).)

Demand

WHEREFORE, Petitioner prays for relief as follows:

1. For a judgment and writ of mandate directing the City of Burbank to approve the Pickwick Project, or in the alternative a judgment and writ of mandate voiding the City's denial of

the Project and directing the City to reconsider the project in a manner that conforms to the requirements of SB 35 and the Housing Accountability Act;

2. For costs of suit and attorney's fees as allowed by law, including under Code of Civil Procedure section 1021.5, Government Code section 65589.5(k)(1)(a)(ii) and (k)(2), and Government Code section 65914;

3. For fines to be assessed pursuant to Gov. Code § 65589.5(k)(1)(B); and

4. For such other and further relief as the Court deems warranted based on the facts established at trial or other judicial resolution of this petition.

Dated: June __, 2022 MILLER STARR REGALIA

By: _____

KENNETH A. STAHL
SAMANTHA L. CHEN
Attorneys for Petitioner YIMBY Law

VERIFICATION

I, Sonja Trauss, declare

5. I am the Executive Director of YIMBY Law, the Petitioner in the above-captioned matter, and I am familiar with the matters discussed in the foregoing first amended petition.

6. I have read the petition and know the contents thereof. The statements of facts therein are true and correct of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, 202_, at _____.

_____