Appellate Case No.: G064286

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

Californians for Homeownership, Inc.,
Petitioner and Appellant,

v.

City of La Habra,
Respondent.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
THE HONORABLE DONALD F. GAFNEY
ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2023-01325471

RESPONDENT'S BRIEF

RICHARDS, WATSON & GERSHON
A Professional Corporation
* GINETTA L. GIOVINCO (BAR NO. 227140)
ggiovinco@rwglaw.com
SOSE TEZYAN (BAR NO. 350909)
stezyan@rwglaw.com
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071-3101
Telephone: 213.626.8484 Facsimile: 213.626.0078

Attorneys for Respondent
CITY OF LA HABRA

Document received by the CA 4th District Court of Appeal Division 3.

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL FOURTH **APPELLATE DISTRICT, DIVISION** THREE	COURT OF APPEAL CASE NUMBER: G064286
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 227140 NAME: Ginetta L. Giovinco FIRM NAME: Richards, Watson & Gershon, APC STREET ADDRESS: 350 S. Grand Ave., Fl. 37 CITY: Los Angeles STATE: CA ZIP CODE: 90071 TELEPHONE NO.: (213) 626-8484 FAX NO.: (213) 626-0078 E-MAIL ADDRESS: ggiovinco@rwglaw.com ATTORNEY FOR (*name*): Respondent, CITY OF LA HABRA	SUPERIOR COURT CASE NUMBER: 30-2023-01325471
APPELLANT/ PETITIONER: CALIFORNIANS FOR HOMEOWNERSHIP, INC. RESPONDENT/ REAL PARTY IN INTEREST: CITY OF LA HABRA	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party *(name*): CITY OF LA HABRA

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest *(Explain):*
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: March 12, 2025

Ginetta L. Giovinco
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
www.courts.ca.gov

Document received by the CA 4th District Court of Appeal Division 3.

TABLE OF CONTENTS

Page

I. INTRODUCTION 8

II. LEGAL BACKGROUND 10

A. Housing Element Law 10

III. STATEMENT OF FACTS 12

A. The City's Housing Element Update Process Involved Multiple Opportunities for Public Participation 12

B. As Authorized by the City's Municipal Code, the City Council Directed Staff to Make Any Technical or Clerical Revisions Necessary for HCD Certification 14

C. HCD Certified the City's Housing Element After Requesting Technical Refinements 15

IV. PROCEDURAL HISTORY 17

V. STANDARD OF REVIEW 18

VI. ARGUMENT 19

A. The City Complied with All Applicable Requirements in its Housing Element Update Process, Resulting in HCD Certification 19

1. The Housing Element is Presumed to Comply with the Law in All Respects Following HCD's Certification 20

2. The Refinements HCD Requested and the City Made Did Not Require a Sixth Public Hearing 21

Document received by the CA 4th District Court of Appeal Division 3.

TABLE OF CONTENTS (cont.)

Page

3. The Refinements to the Housing Element Were Consistent with Both HCD's Requests and the City Council's Direction 25

B. The Trial Court Correctly Found that Government Code Section 65010(b) Applies in Any Event 29

C. AB 2023 Does Not Change the Trial Court's Conclusion that the City's Housing Element is Valid 32

VII. CONCLUSION 34

Document received by the CA 4th District Court of Appeal Division 3.

TABLE OF AUTHORITIES

Page(s)

Cases

Environmental Defense Project of Sierra County v. County of Sierra
(2008) 158 Cal.App.4th 877 ..... 30, 31

Fonseca v. City of Gilroy
(2007) 148 Cal.App.4th 1174 ..... 18, 19

People v. Snook
(1997) 16 Cal.4th 1210 20

Rialto Citizens for Responsible Growth v. City of Rialto
(2012) 208 Cal.App.4th 899 29

Roberson v. City of Rialto
(2014) 226 Cal.App.4th 1499 30

Sounhein v. City of San Dimas
(1992) 11 Cal.App.4th 1255 ..... 30, 31

Weinstein v. County of Los Angeles
(2015) 237 Cal.App.4th 944 23

Statutes

Code of Civil Procedure section 1085 18

Government Code section 65009(c)(1)(A) 23

Government Code section 65010 29

Government Code section 65010(b) 29, 31, 32

Government Code section 65300 10

Government Code section 65302(c) 10

Government Code section 65353(a) 22

Government Code section 65355 22

Document received by the CA 4th District Court of Appeal Division 3.

TABLE OF AUTHORITIES (cont.)

Page(s)

Government Code section 65356 22

Government Code section 65580 14

Government Code section 65581(c) 11

Government Code section 65583 ..... 10, 11

Government Code section 65583(a) 10

Government Code section 65583(a)(3) 11

Government Code section 65583.2 11

Government Code section 65584(a)-(b) 11

Government Code section 65584.01 11

Government Code section 65585 20

Government Code section 65585(b) 32, 33

Government Code section 65585(b)-(d) 12

Government Code section 65585(e) 12, 22

Government Code section 65585(f) 32, 33

Government Code section 65585(f)(1)(B) 32

Government Code section 65585(g) 15

Government Code section 65587(b) 18

Government Code section 65588(a) 11

Government Code section 65588(e) 11

Government Code section 65588(e)(3) 11

Government Code section 65589.3(a) 9, 12, 18, 20, 21

Government Code section 65589.3(b) 21

Document received by the CA 4th District Court of Appeal Division 3.

TABLE OF AUTHORITIES (cont.)

Page(s)

Public Resources Code section 21000 24

Document received by the CA 4th District Court of Appeal Division 3.

I. INTRODUCTION

After a legally-compliant process with opportunities for public participation at five advisory committee meetings, two Planning Commission hearings, and three City Council hearings, the City Council of Respondent City of La Habra ("City") adopted an update to the City's housing element, a required section of its governing general plan. Throughout this process, the City worked with the California Department of Housing and Community Development ("HCD") and addressed HCD's comments on housing element drafts. Also during this time, Appellant Californians for Homeownership ("Appellant") threatened to sue the City for not adopting the housing element fast enough.

In its resolution adopting the housing element, and as authorized by the City's Municipal Code ("LHMC"), the City Council directed the City Manager to work with HCD to make any final, technical or clerical changes needed for HCD's certification of the housing element. City staff did so, posted the updated housing element on the City's website for more than seven days, and then sent it to HCD. On April 21, 2023, HCD certified the housing element as substantially complying with state law and expressing no concerns about the City's approach.

Although the City adopted a housing element and received HCD certification – Appellant's ostensible goal – Appellant filed this lawsuit, claiming the City was required to hold yet another

Document received by the CA 4th District Court of Appeal Division 3.

public hearing. Appellant is incorrect, and its claims fail for the following reasons:

- The City's now-certified housing element is presumed valid and Appellant has not overcome that presumption. (Gov't Code § 65589.3(a).)

- The technical revisions were within the City Council's formal direction to staff in Resolution No. 6085 (which Appellant never challenged at the time), responsive to HCD's final requests, made available to the public, and resulted in HCD certification. HCD did not question the City's process. The Council has since ratified the revisions by adopting several ordinances to implement the certified housing element.

- Appellant has not shown any prejudice, substantial harm, or that a different outcome would have occurred with yet another public hearing.

- A recent statutory amendment is inapplicable to the facts at hand and does not compel a different approach than the City took or than the trial court reached.

In short, as the trial court did, this Court should reject Appellant's attempt to interfere with the City's ongoing efforts to produce housing under the new housing element and reject Appellant's request to set aside the City's certified housing

Document received by the CA 4th District Court of Appeal Division 3.

element. The Court should deny the appeal and affirm the judgment in the City's favor.

II. LEGAL BACKGROUND

A. Housing Element Law

Each city is required to adopt "a comprehensive, long-term general plan for the physical development of the … city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning." (Gov't Code § 65300.) A general plan is required to include certain "elements," or sections, including a housing element. (Gov't Code § 65302(c).)

A housing element "shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing." (Gov't Code § 65583.) It also must include "an assessment of housing needs and an inventory of resources and constraints that are relevant to the meeting of these needs" (Gov't Code § 65583(a)), with specific information required. (See Gov't Code § 65583(a)-(c).) In short, a housing element "is a policy document that plans for current and future housing needs within [a city], as well as identifies strategies for expanding housing opportunities and services for all household types and income groups." (Appellant's Appendix ["AA"] 496.) The State "recognize[s] that each locality is best capable of

Document received by the CA 4th District Court of Appeal Division 3.

determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs." (Gov't Code § 65581(c).)

Housing elements must be updated regularly. (Gov't Code § 65588(a), (e).) As relevant here, the City's housing element must be updated every eight years. (Gov't Code § 65588(e)(3).) The period at issue in this litigation is referenced as the "sixth cycle" of this process. A housing element update must explain how the community will meet its share of regional housing needs. HCD and regional councils of governments together determine the housing need, at all income levels, for cities and counties; this is known as a Regional Housing Needs Assessment ("RHNA") and results in each jurisdiction being assigned a number of housing units ("RHNA allocation" or "RHNA number") for which it must adequately plan. (Gov't Code §§ 65583; 65584(a)-(b); 65584.01.) In short, the housing element must identify appropriately-zoned sites, with access to public facilities and services, that can accommodate the development needed to meet the city's RHNA allocation at various income levels. (Gov't Code §§ 65583(a)(3), 65583.2.)

For the 6th cycle, the City's assigned RHNA number is 804 units, with a breakdown in income categories of extremely low (96 units); very low (96 units); low (116 units); moderate (130 units); and above-moderate (366 units). (AA 847.) The City

Document received by the CA 4th District Court of Appeal Division 3.

determined that it could identify appropriately-zoned sites to accommodate this number without needing to rezone any properties. (AA 502, 856.)

HCD reviews housing elements and makes findings as to whether they substantially comply with Housing Element Law. (Gov't Code § 65585(b)-(d).) Prior to adopting a housing element, the local jurisdiction's legislative body "shall consider the findings made by" HCD. (Gov't Code § 65585(e).) A housing element that HCD has certified as substantially complying with state law is entitled to a rebuttable presumption of its validity. (Gov't Code § 65589.3(a).)

III. STATEMENT OF FACTS

A. The City's Housing Element Update Process Involved Multiple Opportunities for Public Participation

The City provided numerous opportunities for meaningful public participation in the housing element update process that led to the City's housing element update being certified by HCD as substantially complying with state law. Between November 2020 and June 2021, the City conducted five public meetings of its General Plan Advisory Committee ("GPAC"), which is not required but exists for greater public input, to review housing element requirements and issues. (AA 543.) To inform the GPAC's deliberations and provide more input, 14 additional

Document received by the CA 4th District Court of Appeal Division 3.

stakeholders were directly contacted by phone, mail, and email; these included developers, fair housing agencies, advocacy groups, health care agencies, and local organizations. (AA 733.)

On July 26, 2021, the City's Planning Commission held a duly-noticed public hearing on the draft housing element. (AA 543.) The City received one letter from an affordable housing non-profit organization (the Kennedy Commission), and City staff determined that all issues raised in the letter were already addressed in the draft housing element. (AA 497, 504.)

The City Council reviewed the draft housing element at a duly-noticed public hearing on August 16, 2021. (AA 543.) The City then submitted the draft housing element to HCD as required by law and received comments back from HCD on November 1, 2021. (*Ibid.*) On March 21, 2022, the City Council held another duly-noticed public hearing to review the modifications that had been made to the draft housing element in response to HCD's comments. (AA 497.) The City sent the revised draft element to HCD on March 23, 2022, and received further comments from HCD on May 23, 2022. (*Ibid.*)

The City made extensive revisions to address HCD's comments and the Planning Commission held another duly-noticed public hearing on August 22, 2022, voting to recommend City Council approval of the housing element. (*Ibid.*) On September 19, 2022, the City Council held another duly-noticed

Document received by the CA 4th District Court of Appeal Division 3.

public hearing on the draft housing element, at the conclusion of which it adopted Resolution No. 6085 (further discussed below in Section III.B) which adopted the housing element and found it complies with State Housing Law. (AA 543-546.)

The City's public engagement efforts went beyond holding noticed public hearings. The initial draft housing element, and all updated versions, were posted on the City's website. (AA 504.) And, notices for public meetings and hearings were distributed expansively, including to those who had participated in the GPAC meetings (GPAC members, housing advocacy groups, and interested residents); to regional, state, and federal agencies; to local libraries; and to the media. (*Ibid.*; see also AA 543.) Other than the one comment letter from the Kennedy Commission, the only other correspondence or public testimony that the City received came from Appellant – which sent three letters noting that the City had not yet adopted its housing element quickly enough and threatening to sue over that. (AA 506.)

B. As Authorized by the City's Municipal Code, the City Council Directed Staff to Make Any Technical or Clerical Revisions Necessary for HCD Certification

As part of Resolution No. 6085, the City Council found and determined that the housing element "has been prepared and is in compliance with, State Housing Law including Government

Document received by the CA 4th District Court of Appeal Division 3.

Code Section 65580 et seq., the La[] Habra General Plan, and the La Habra Municipal Code." (AA 545.) The City Council also recognized that even though HCD's prior comments all had been addressed, HCD still could request minor further technical or clerical refinements to certify the housing element. Thus, the City Council, through Resolution No. 6085, "further directed the City Manager to submit the adopted 2021-2029 Housing Element to HCD for review pursuant to Government Code Section 65585(g) and [he] is further directed to make any technical or clerical revisions to the Housing Element as may be necessary to obtain a finding of substantial compliance from HCD." (AA 545.) This delegation was expressly authorized by LHMC section 2.16.200, which provides that it "shall be the duty of the city manager to perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinance or resolution or other official action of the city council." (AA 920.)

C. HCD Certified the City's Housing Element After Requesting Technical Refinements

Consistent with the City Council's direction, City staff submitted the adopted version to HCD the next day, on September 20, 2022. (AA 513.) On November 15, 2022, HCD responded and requested additional technical revisions for the housing element to "fully" comply with state law. (*Ibid.*) To ensure that the City was on the right path, City staff twice met with HCD staff to discuss the requested refinements. (*Ibid.*) As

Document received by the CA 4th District Court of Appeal Division 3.

the City later confirmed, "during the February 9, 2023 meeting, HCD staff and City staff agreed that the revisions to the adopted Housing Element that HCD requested were very minor and technical in nature, most of which involved simply adding background/context data, clarifying and refining programs, and making revisions to be consistent with HCD's most recent guidance from December 2022 and address laws that would be going into effect on January 1, 2023." (AA 513-514).) City staff was able to finalize the refinements and format the housing element within a matter of days. (AA 514.) On February 22, 2023, the City Manager wrote to HCD staff:

> Per the authority delegated to me by the City Council in Resolution No. 6085, I have approved the technical and clerical revisions to the adopted 2021-2029 Housing Element that HCD requested in its November 15, 2022 letter, as discussed during the two subsequent meetings with you and your staff. A summary of HCD's comments from its November 15, 2022 letter, the City's responses to those comments, and the City's proposed technical and clerical refinements are included with this letter in Attachment "B".
>
> As suggested by HCD, the City posted the Final 2021-2029 Housing Element incorporating Technical and Clerical Revisions on the City's website for more than seven days prior to this transmittal and emailed all interested parties to share the link to the Final Housing Element, enabling them to access the document for viewing and/or downloading. The email was sent and the Final Housing Element posted on the City's website on February 13, 2023. (AA 514.)

Document received by the CA 4th District Court of Appeal Division 3.

On April 21, 2023, HCD responded, thanking the City for submitting the "adopted housing element that was received for review on February 22, 2023 along with technical modifications authorized by Resolution Number 6085." (AA 531.) HCD confirmed that the "adopted housing element [is] in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code)." (*Ibid.*) Notably, HCD did not object to the City's process of making technical modifications.

IV. PROCEDURAL HISTORY

Appellant filed this lawsuit on May 15, 2023 by way of a petition for writ of mandate. (AA 4-27.) The City thereafter filed its answer. (AA 29-40.)

Appellant filed its opening brief on March 3, 2024 (AA 44-58) along with declarations (AA 59-84) and a request for judicial notice (AA 85-469). The City filed its opposition brief on April 2, 2024 (AA 472-490), along with a declaration (AA 491-532), evidentiary objections (AA 533-535), and its own request for judicial notice (AA 536-1038). Appellant filed its reply brief (AA 1042-1050) and a reply request for judicial notice (AA 1051-1056) on April 8, 2024.

The trial court conducted the writ hearing on June 12, 2024. (AA 1061.) At the conclusion of the hearing, the trial court confirmed its tentative ruling in an eight-page final ruling which denied the writ petition in its entirety. (AA 1061-1068.) Appellant

Document received by the CA 4th District Court of Appeal Division 3.

filed a notice of appeal the next day. (AA 1069.) Judgment was entered in favor of the City on August 12, 2024. (AA 1077-1078.) Without objection, on September 16, 2024, this Court ordered the present appeal to be deemed an appeal from the judgment.

V. STANDARD OF REVIEW

A challenge to a local government's housing element shall be brought pursuant to Code of Civil Procedure section 1085 [traditional mandate]. (Gov't Code § 65587(b).) A court's review is decidedly narrow: "the court's role in determining a mandamus challenge to a locality's housing element is simply to determine whether the locality has satisfied statutory requirements. It is not to reach the merits of the element or to interfere with the exercise of the locality's discretion in making substantive determinations and conclusions about local housing issues, needs, and concerns." (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1185 ("*Fonseca*").) Where there is substantial compliance, courts "will not interfere with its [the city's] legislative action, unless that action was arbitrary, capricious, or entirely lacking in evidentiary support." (*Fonseca*, *supra*, 148 Cal.App.4th at 1191.)

Once HCD has certified the housing element as being in substantial compliance with state law, "there shall be a rebuttable presumption of the validity of the element or amendment." (Gov't Code § 65589.3(a).)

Document received by the CA 4th District Court of Appeal Division 3.

This Court reviews the matter de novo to "independently ascertain as a question of law whether the housing element at issue substantially complies with the requirements of the Housing Element Law." (*Fonseca*, *supra*, 148 Cal.App.4th at 1191.) In doing so, this Court applies the same standard of review as a trial court. (*Fonseca*, *supra*, 148 Cal.App.4th at 1191 ["like the trial court, we do not review the merits of the housing element at issue. … Our review thus comes down to independently determining whether the housing element at issue is in substantial compliance with applicable statutory requirements"].)

VI. ARGUMENT

A. The City Complied with All Applicable Requirements in its Housing Element Update Process, Resulting in HCD Certification

The City complied with both the letter and the spirit of the law in updating its housing element. The City held five GPAC meetings, two Planning Commission public hearings, and three City Council public hearings, with ample notice provided to the public and the draft housing element versions widely available at all times. As the City Council directed, City staff worked with HCD to respond to all HCD comments and HCD certified the housing element. Appellant's attempt to undo the final step in this process, which would only create delay in the production of housing in La Habra, fails.

Document received by the CA 4th District Court of Appeal Division 3.

1. The Housing Element is Presumed to Comply with the Law in All Respects Following HCD's Certification

Because HCD certified the City's housing element, it is presumed to comply with state law, substantively and procedurally. (*See* Gov't Code § 65589.3(a) [in action to challenge the validity of a housing element, "there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to [Gov't Code] Section 65585, [HCD] has found that the element or amendment substantially complies with the requirements of this article"].) Appellant has provided no basis to evade this high bar.

Government Code section 65589.3(a) does not contain any limiting language regarding the presumption of validity. It does not state that the presumption extends only to the substance of the housing element and not the process for its adoption or amendment. It is a broad and unambiguous statement; once HCD certifies a housing element, it is presumed valid, period. This encompasses both procedural and substantive issues. Had the Legislature wanted to parse the statute as Appellant does, it would have done so. Where the Legislature has not imposed limiting language to a presumption, it cannot be inferred. (*See*, *e.g.*, *People v. Snook* (1997) 16 Cal.4th 1210, 1215 [courts "presume the Legislature meant what it said"].)

Document received by the CA 4th District Court of Appeal Division 3.

This fundamental principle applies with greater force here, where the Legislature *did* amend this statute since the filing of Appellant's lawsuit and still did not include any such limiting language. The Legislature added a new subdivision, effective January 1, 2025, to provide that there is a rebuttable presumption of the invalidity of a housing element or amendment if HCD has found that it does not substantially comply with the law. (*See* Gov't Code § 65589.3(b).) Had the Legislature wanted to provide that the rebuttable presumption applies only to the substance of a housing element and not procedural aspects, the Legislature presumably would have done this when making other revisions to this exact statute. The Legislature did not do so.

There is no limitation on the rebuttable presumption in favor of validity afforded by Government Code section 65589.3(a). The City is entitled to the presumption of validity of its housing element in all aspects following HCD's certification. As shown below, Appellant has failed to rebut that presumption.

2. The Refinements HCD Requested and the City Made Did Not Require a Sixth Public Hearing

The technical refinements that HCD requested, and which the City made to secure HCD's certification of the housing element as the final step in the housing element update process, were within the ambit of the City Council's direction to staff in Resolution No. 6085. Appellant's attempt to transform these

Document received by the CA 4th District Court of Appeal Division 3.

technical revisions into a wholesale amendment to the housing element – requiring a restart to the process or a sixth public hearing – falls flat.

First, the City already provided more public hearings on the housing element update than the law requires. The City's Planning Commission held two hearings on the housing element, more than the one that is required. (Gov't Code § 65353(a) [planning commission must hold "at least one public hearing" on general plan amendment].) The City Council considered HCD's comments (Gov't Code § 65585(e)) and then held three hearings of its own, also more than required. (Gov't Code § 65355.) And, the City Council adopted Resolution No. 6085 to formalize its adoption of the housing element. (Gov't Code § 65356 [legislative body shall adopt or amend general plan by resolution].) There was a transparent, duly-noticed public process for the housing element update that offered multiple opportunities for participation. The trial court thus had no trouble concluding that the City "held at least one public hearing." (AA 1065.)

Second, as authorized by the LHMC, the City Council directed the City Manager to make technical and clerical refinements necessary to obtain HCD's certification. (AA 545.) Specifically, Resolution No. 6085 directed the City Manager "to make any technical or clerical revisions to the Housing Element as may be necessary to obtain a finding of substantial compliance from HCD" (AA 545) and this direction was authorized by LHMC

Document received by the CA 4th District Court of Appeal Division 3.

section 2.16.200 (AA 920). Appellant never challenged this specific provision or Resolution No. 6085 at all, and the time to do so has long since passed. (*See* Government Code section 65009(c)(1)(A) [any lawsuit to "review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan" is required to be filed and served "on the legislative body within 90 days after the legislative body's decision"].) Nor has Appellant presented any statute or case to show that this express delegation of authority is improper. Indeed, as the trial court found "Respondent is afforded discretion in how to perform its mandatory duties." (AA 1066, citing to *Weinstein v. County of Los Angeles* (2015) 237 Cal.App.4th 944, 965.)

Appellant also has not provided any support for its central claim that *any* change or revision to a housing element, including those directed by the legislative body, constitutes a formal amendment to the housing element. Simply because Appellant labels the technical and clerical refinements as a full-blown "amendment" to the housing element does not make it so. (AOB at 12.) Under Appellant's interpretation, any change at all that is made to a housing element following a city council's adoption of it – even those expressly directed by the council, and no matter how limited – requires a restart to the housing element process, resulting in a never-ending loop. This defeats the entire purpose of having a short, eight-year cycle in which housing elements are updated and would frustrate rather than support opportunities

Document received by the CA 4th District Court of Appeal Division 3.

for development of additional housing. The lack of merit to Appellant's position is especially true here, where the City already had held a combined five Planning Commission and City Council hearings on the housing element, posted the final version on the City's website prior to sending it to HCD, and sent that link to all interested parties. HCD never questioned the process by which these minor technical revisions were made and, in fact, validated that process when it certified the housing element.

Third, the City *did* provide notice and an opportunity for public review and comment on the updated housing element with the technical and clerical corrections incorporated. As the City Manager explained, "As suggested by HCD, the City posted the Final 2021-2029 Housing Element incorporating Technical and Clerical Revisions on the City's website for more than seven days" prior to sending it to HCD and "emailed all interested parties to share the link to the Final Housing Element, enabling them to access the document for viewing and/or downloading. The email was sent and the Final Housing Element posted on the City's website on February 13, 2023." (AA 514.)

Fourth, Appellant's passing implication that the technical refinements could trigger the California Environmental Quality Act ("CEQA") (Pub. Resources Code § 21000, *et seq*.) is meritless. (AOB at 13-14.) As City staff explained in its presentation, the housing element is a policy document and no rezoning was required to accommodate the City's RHNA allocation. (AA 502.)

Document received by the CA 4th District Court of Appeal Division 3.

The City Council further confirmed that the housing element "would not approve any development projects and does not propose any new programs or programs that would substantially change any land use or portend any new development not already anticipated in the City's previous Housing Element." (AA 544.) Appellant has not argued, nor could it, that the technical revisions to the housing element could or did change this conclusion.

In short, the City Council's direction to the City Manager to work with HCD to get the housing element certified after a lengthy process was lawful, proper, practical, and successful. The Court should reject Appellant's effort to create further delay and add layers of process at odds with state law, the LHMC, Resolution No. 6085, and the practical goal of obtaining a certified housing element.

3. The Refinements to the Housing Element Were Consistent with Both HCD's Requests and the City Council's Direction

Appellant opines that the revisions that were made to the housing element go beyond Appellant's opinion of what the City Council delegated the City Manager to do. (AOB at 14-15.)

Document received by the CA 4th District Court of Appeal Division 3.

Appellant's opinion, without authority, simply does not matter.[1] It is the City Council, not Appellant, that determines if the revisions were within the scope of their direction. At no time has the City Council expressed any concern. On the contrary, the City Council has adopted ordinances implementing various programs required by the housing element, including amending the LHMC to update definitions consistent with state law; remove parking constraints for certain housing types; remove constraints on development of mixed-use and multi-unit residential projects; and increase maximum height limits in certain zones. (AA 921-1038.) Had the City Council believed that the refinements were more than technical, it would not have taken steps in furtherance of the final housing element. Appellant ignores these subsequent actions entirely, failing even to mention them in its opening brief.

Beyond that, Appellant is wrong as a matter of fact. Appellant fails to develop any argument regarding the specific revisions that were made, offering instead only a passing reference to them and thereby abandoning any argument on this point. (AOB at 14-15.) Even if the Court were to consider the argument, it fails on its merits. In brief:

---

[1] Appellant also claims that the City "announced in February 2023 that they had made extensive changes to the housing element…." (AOB at 5.) This is inaccurate. The City never characterized the technical revisions as "extensive changes."

Document received by the CA 4th District Court of Appeal Division 3.

- The addition of two new sites on the City's housing inventory was not necessary to meet the City's RHNA numbers, nor did the identification of these two new sites in the site inventory alter the City's zoning regulations. The City merely identified the potential residential development capacity of these two sites based on their already-existing zoning. In addition, the City already had identified more than adequate capacity in its site inventory for all income levels, even before the addition of these two sites. (AA 520-521, 678.)

- The agreement to amend five definitions in the LHMC was a direct response to a recommendation in the HCD technical advisory published in December 2022. (AA 523-524.)

- The City provided additional details regarding the City's ongoing capital improvement projects in a program that builds on existing programs (AA 526, 701, 713, 838) and added details to a prior program which included provisions to address residential care facilities. (AA 523-525.)

- The City agreed to refine existing housing element programs, including to further support housing as follows:

  - Adding a specific percentage to the number of projects the City already had committed to locate in central La Habra. (AA 713, 907.)

Document received by the CA 4th District Court of Appeal Division 3.

o Making minor revisions to existing commitments to ADU production goals (AA 655, 704, 843, 897.)

o Agreeing to increase residential development height limits in certain zones. (AA 610.)

o Agreeing to include technical revisions in one program to address HCD's December 2022 advisory and new state law requirements for emergency shelters, created by legislation that the Governor signed on September 28, 2022. (AA 524, 908.)

In sum, these refinements identify two sites with existing residential capacity and redevelopment potential (without altering any applicable zoning requirements), make minor revisions to existing programs, and respond to new HCD technical guidance and legislation. None of the refinements represent any policy change for the City. The City Council's approval of ordinances to implement many of these precise programs supports the fact that the City Manager used his delegated authority in exactly the way the Council intended. The end result – a certified housing element and the Council's implementation of the programs therein – is a win for the community at large and for housing proponents.

Document received by the CA 4th District Court of Appeal Division 3.

B. The Trial Court Correctly Found that Government Code Section 65010(b) Applies in Any Event

As the trial court concluded, the City complied with its obligations in adopting its updated housing element. Appellant has failed to demonstrate otherwise. But as the trial court also explained, even if the City had erred, Government Code section 65010(b) applies. Under this statute, "a court may not set aside the actions of a legislative body based on an error or omission in a notice of public hearing, unless the court finds the error was prejudicial, the complaining party suffered substantial injury, and a different result was probable had the error not occurred." (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 919, citing Gov't Code § 65010(b).) Courts cannot presume prejudice, substantial injury, or the probability of a different result. (*Ibid*.)

Appellant has not demonstrated that it or anyone else was prejudiced or suffered any injury, let alone a substantial injury, when the City made the updated housing element available to the public for a week prior to submitting it to HCD, including posting it on the City's website and mailing out the link. Nor can Appellant show that a different result would have occurred had the City Council held a fourth public hearing on the housing element, especially given that the City Council has ratified the revisions by adopting ordinances to implement housing element

Document received by the CA 4th District Court of Appeal Division 3.

programs. The trial court agreed, finding that Appellant "has not produced any evidence" to show that the City's action "was prejudicial, that it [Appellant] or the public suffered substantial injury, or that a different result was probable had the error not occurred." (AA 1066.) The trial court continued:

> At best, [Appellant] has argued Respondent's actions have created uncertainty as to which Housing Element is effective, and it argues that, had Respondent held a public hearing, "members of the public could have presented evidence challenging the inclusion of those sites as viable sites for housing development." This is insufficient. (See *Roberson v. City of Rialto* (2014) 226 Cal.App.4th 1499, 1507-1508 [it is Petitioner's burden to provide evidence of prejudice, and it does not meet this burden by generally averring it would have submitted written comments, attended the hearing, or testified in person.

(AA 1066.)

This same reasoning applies on appeal as well.

As it did below, Appellant again cites two cases that the trial court found were readily distinguishable, *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877 and *Sounhein v. City of San Dimas* (1992) 11 Cal.App.4th 1255. (AOB 18-20.) Appellant's reliance on these cases is still unavailing.

The Court of Appeal in *Environmental Defense Project* considered whether the County of Sierra erred in noticing a board

Document received by the CA 4th District Court of Appeal Division 3.

of supervisors hearing on a zoning ordinance before the county's planning commission had even made a recommendation on the matter. (*Environmental Defense Project*, *supra*, 158 Cal.App.4th at 881-884, 888.) The Court of Appeal affirmed the trial court's ruling that the county's streamlined process violated the law and rejected the county's reliance on Government Code section 65010(b) to overlook this error. (*Environmental Defense Project*, *supra*, 158 Cal.App.4th at 891-893.)

In *Sounhein*, the relevant city adopted a zoning ordinance without *any* planning commission hearing or compliance with notice and hearing procedures for zoning ordinances, in violation of applicable Government Code provisions. (*Sounhein*, *supra*, 11 Cal.App.4th at 1259-1261.)

No similar circumstances are present here. Between the Planning Commission and the City Council, the City held five public hearings on the housing element update prior to its adoption and also made the final version of the housing element, with the technical revisions incorporated, available for public review for over seven days before transmitting it to HCD. There is no reasonable argument that the City's process here was impermissibly streamlined as in *Environmental Defense Project*, or lacked meaningful public review opportunities as in *Sounhein*, as the trial court also concluded. (AA 1067.)

Document received by the CA 4th District Court of Appeal Division 3.

Even if the City had erred in connection with the final step in its housing element update process (and it did not), Appellant's challenge still fails due to Government Code section 65010(b).

C. AB 2023 Does Not Change the Trial Court's Conclusion that the City's Housing Element is Valid

Appellant's final argument tries to force the current dispute into the ambit of recent legislation. This effort fails because Assembly Bill 2023 is inapplicable based on the facts of the City's situation.

Assembly Bill 2023 added language to Government Code section 65585(f) to provide that if HCD finds that a *draft* housing element or *draft* amendment to housing element does not substantially comply with state law, the legislative body must take certain actions. (Gov't Code § 65585(f).) If the legislative body elects to change the *draft* document in response, it then must comply with the requirements of subdivision (b) of that section. (Gov't Code § 65585(f)(1)(B).) As stated therein, any "subsequent draft revision" of a housing element shall be posted on the agency's website and provided to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting the draft revision to the department." (Gov't Code § 65585(b).) Regardless here, there is no *draft* version of the

Document received by the CA 4th District Court of Appeal Division 3.

housing element at issue. The City Council had completed the iterative process to finalize its draft housing element, culminating in the City Council adopting the final housing element. At that point, the City Council directed staff to work with HCD and complete the final steps to obtain HCD's certification. Stated differently, the changes that Assembly Bill 2023 made to Government Code section 65585(f) relate to a step in the housing element process that the City was well beyond when the City Council adopted the housing element and directed City staff to make any technical and clerical corrections to result in HCD certifying the City's housing element. Even Appellant appears to acknowledge this, stating correctly that the City adopted its housing element in September 2022 and noting that this "differed from prior city council reviews of the housing element, which merely reviewed the document and authorized the transmission of a *draft* to HCD." (AOB at 12-13, emphasis original.) Appellant's attempt to force the City back into an earlier stage of the housing element update process is both inconsistent with its acknowledgement of the procedural posture at the administrative level, and unavailing.

Finally, even if AB 2023 did apply to the City's situation and require the City to proceed in compliance with subdivision (b) of Section 65585 (which again, it does not), the City provided the 7-day public notice of the technical refinements as recommended by HCD. (AA 514.)

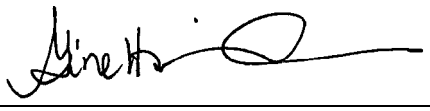
Document received by the CA 4th District Court of Appeal Division 3.

VII. CONCLUSION

Throughout its housing element update, the City followed the law, engaged with the public and with HCD, addressed HCD's concerns, and obtained HCD's certification. The City has taken steps to implement housing element programs and continues to do so. The Court should reject Appellant's attempt to set this all aside in the name of further process and should deny the appeal.

Dated: March 12, 2025

RICHARDS, WATSON & GERSHON
A Professional Corporation
GINETTA L. GIOVINCO
SOSE TEZYAN

By: 

Ginetta L. Giovinco
Attorneys for Respondent
CITY OF LA HABRA

Document received by the CA 4th District Court of Appeal Division 3.

CERTIFICATE OF CONFORMITY

In accordance with Rule 8.204(c)(1) of the California Rules of Court, I certify under penalty of perjury under the laws of the State of California that the Respondent's Brief is produced using 13-point Century Schoolbook type, a proportionally spaced typeface, and does not exceed 14,000 words. According to the word count function on the word processing program used to generate this brief, the brief, excluding the title page and tables of contents and authorities, contains 5,739 words.

Executed on March 12, 2025.



Ginetta L. Giovinco

Document received by the CA 4th District Court of Appeal Division 3.

PROOF OF SERVICE

Californians for Homeownership, Inc. v. City of La Habra
Court of Appeal, Fourth Appellate District,
Division Three, Case No. G064286

I, Pamela Foley, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within action. My business address is 350 South Grand Avenue, 37th Floor, Los Angeles, California 90071. My email address is: pfoley@rwglaw.com. On March 12, 2025, I served the within document(s) described as:

RESPONDENT'S BRIEF

on the interested parties in this action as stated below:

Matthew P. Gelfand
Allyson H. Richman
CALIFORNIANS FOR HOMEOWNERSHIP, INC.
525 S. Virgil Avenue
Los Angeles, CA 90020
Tel: (213) 739-8206
Fax: (213) 480-7724
matt@caforhomes.org
allyson@caforhomes.org
Attorneys for Petitioner,
Californians for Homeownership, Inc.

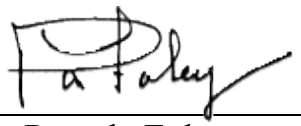
☒ (BY ELECTRONIC SERVICE) By submitting an electronic version of the document(s) to TrueFiling through their user interface at TrueFiling. [CCP § 1010.6(a)(C)]

Document received by the CA 4th District Court of Appeal Division 3.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 12, 2025, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.



Pamela Foley
(pfoley@rwglaw.com)

Document received by the CA 4th District Court of Appeal Division 3.