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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

CITY OF MILLBRAE, Plaintiff/Petitioner, v. COUNTY OF SAN MATEO et al., Defendants/Respondents.	Case No. 23-CIV-05426 **ANSWER OF YES IN MY BACK YARD TO THE CITY OF MILLBRAE'S COMPLAINT FOR VALIDATION** Hon. Nancy L. Fineman Department 4

YES IN MY BACK YARD ("YIMBY"), a California public benefit corporation with an interest in this matter, answers the CITY OF MILLBRAE ("City")'s Complaint for Validation as follows:

1. YIMBY denies the allegations of ¶ 1.

2. YIMBY denies the allegations of ¶ 2, except that on September 12, 2023, Defendant/Respondent COUNTY OF SAN MATEO, by vote of Defendant/Respondent BOARD OF SUPERVISORS OF THE COUNTY OF SAN MATEO (together "County") adopted the Resolution at issue in this action.

3. YIMBY admits the allegations of ¶ 3.

4. YIMBY denies the allegations of ¶ 4, except that the Property today operates as a La Quinta Inn.

5. YIMBY denies the allegations of ¶ 5.

6. YIMBY denies the allegations of ¶ 6, except that the City seeks to invalidate the Resolution.

7. YIMBY denies the allegations of ¶ 7, except that the City seeks a writ of mandate.

The Parties

8. YIMBY denies the allegations of ¶ 8, except that the City is what it alleges itself to be, and that the Property at issue is located within the City.

9. YIMBY admits the allegations of ¶ 9.

10. YIMBY admits the allegations of ¶ 10.

11. YIMBY admits the allegations of ¶ 11.

12. YIMBY denies, for lack of information or belief sufficient to answer, the allegations of ¶ 12.

13. YIMBY denies, for lack of information or belief sufficient to answer, the allegations of ¶ 13.

Jurisdiction and Venue

14. YIMBY denies the allegations of ¶ 14, except that the City's Complaint is brought under the Validation Statutes (Code Civ. Proc. §§ 860 *et seq.*).

15. YIMBY denies the allegations of ¶ 15, except that Section 36003 of the Health and Safety Code authorizes certain actions pursuant to the Validation Statutes.

16. YIMBY admits the allegations of ¶ 16.

17. YIMBY admits the allegations of ¶ 17.

Factual and General Answers

18. YIMBY admits the allegations of ¶ 18.

19. YIMBY admits the allegations of ¶ 19.

20. YIMBY admits the allegations of ¶ 20.

21. YIMBY admits the allegations of ¶ 21.

22. YIMBY admits the allegations of ¶ 22.

23. YIMBY admits the allegations of ¶ 23.

24. YIMBY admits the allegations of ¶ 24.

25. YIMBY denies the allegations of ¶ 25, except that the Board of Supervisors adopted the Resolution.

26. YIMBY admits the allegations of ¶ 26.

27. YIMBY admits that Article XXXIV of the California Constitution was adopted in 1950 and states as quoted (with minor transcription errors) in ¶ 27. Any implied allegation of fact is denied.

28. YIMBY denies, for lack of information or belief sufficient to answer, the allegations of ¶ 28.

29. YIMBY admits the allegations of ¶ 29.

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30. YIMBY admits that *Conway v. City of San Mateo* (1981) 127 Cal.App.3d 330, 334, states as quoted in ¶ 30. Any implied allegation of fact is denied.

31. YIMBY admits the allegations of ¶ 31.

32. YIMBY admits that *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234, states as quoted in ¶ 32. Any implied allegation of fact is denied.

33. YIMBY denies the allegations of ¶ 33.

34. YIMBY denies the allegations of ¶ 34, except that the Legislature enacted the Public Housing Election Implementation Law (Health & Saf. Code §§ 37000 *et seq.*) in 1976, and that Section 37000 states as quoted. (Neither "low income housing projects" nor "exemptions," however, appear in Article XXXIV or the Public Housing Election Implementation Law.)

35. YIMBY denies the allegations of ¶ 35, except that the California Supreme Court upheld the Public Housing Election Implementation Law in *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171.

36. YIMBY denies the allegations of ¶ 36, except that AB 83 (2020) amended Section 37001 of the Health and Safety Code to state as quoted.

37. YIMBY denies the allegations of ¶ 37, except that AB 140 (2021) again amended Section 37001 of the Health and Safety Code.

38. YIMBY denies the allegations of ¶ 38.

39. YIMBY admits the allegations of ¶ 39.

40. YIMBY denies the allegations of ¶ 40.

41. YIMBY denies, for lack of information or belief sufficient to answer, the allegations of ¶ 41.

42. YIMBY denies, for lack of information or belief sufficient to answer, the allegations of ¶ 42.

43. YIMBY denies, for lack of information or belief sufficient to answer, the allegations of ¶ 43.

44. YIMBY denies, for lack of information or belief sufficient to answer, the allegations of ¶ 44.

45. YIMBY denies the allegations of ¶ 45.

46. YIMBY denies the allegations of ¶ 46.

47. YIMBY denies the allegations of ¶ 47.

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48. YIMBY denies the allegations of ¶ 48, except that the County has not put its Resolution to a vote of the electors of the City of Millbrae.

Answer to First Cause of Action

49. YIMBY incorporates its answers to the allegations in ¶¶ 1–48 of the City's Complaint.

50. YIMBY admits the allegations of ¶ 50.

51. YIMBY admits the allegations of ¶ 51.

52. YIMBY denies the allegations of ¶ 52, except that the Resolution of September 12, 2023, declared the County's intent to purchase the Property, and that the County has not put its Resolution to a vote of the electors of the City of Millbrae.

53. YIMBY denies the allegations of ¶ 53.

54. YIMBY denies the allegations of ¶ 54.

55. YIMBY denies the allegations of ¶ 55, objecting that the Resolution is valid and lawful.

Answer to Second Cause of Action

56. YIMBY incorporates its answers to the allegations in ¶¶ 1–55 of the City's Complaint.

57. YIMBY denies the allegations of ¶ 57.

58. YIMBY denies the allegations of ¶ 58.

59. YIMBY denies the allegations of ¶ 59.

60. YIMBY denies the allegations of ¶ 60.

61. YIMBY denies the allegations of ¶ 61, objecting that the City is not entitled to a writ of mandate.

Answer to Third Cause of Action

62. YIMBY incorporates its answers to the allegations in ¶¶ 1–61 of the City's Complaint.

63. YIMBY denies, for lack of information or belief sufficient to answer, the allegations of ¶ 63.

64. YIMBY admits the allegations of ¶ 64, objecting that the City is not entitled to a declaration.

Answer to Fourth Cause of Action

65. YIMBY incorporates its answers to the allegations in ¶¶ 1–64 of the City's Complaint.

66. YIMBY denies the allegations of ¶ 66.

67. YIMBY admits the allegations of ¶ 67, objecting that the City is not entitled to an injunction.

* * *

STATEMENT CONSTITUTING DEFENSE

YIMBY alleges as new matter that:

1. YIMBY's mission is to end the housing shortage and achieve affordable, sustainable, and equitable housing for all.

2. YIMBY litigates in support of housing through its project YIMBY Law. (See, e.g., *Yes In My Back Yard v. City of Culver City* (2023) 96 Cal.App.5th 1103 [enforcing Housing Crisis Act of 2019, Gov. Code § 66300]; *Cal. Hous. Def. Fund v. City of Cupertino* (Super. Ct. Santa Clara County, 2024, No. 23CV410817 [enforcing Housing Element Law, Gov. Code § 65587].)

3. YIMBY's 501(c)(4) affiliate, YIMBY Action, organizes members to attend local hearings, write petitions, and engage decisionmakers in support of housing. Several YIMBY Action members spoke in support of the Resolution at the County meeting of September 12, 2023.

4. The Property is zoned to permit supportive housing by right.

5. No one mentioned Article XXXIV at the County meeting of September 12, 2023.

Incorporating all the above answers and new matters, YIMBY states as affirmative defenses that:

First Affirmative Defense

(Failure to State a Claim—Raised Against City)

The City's Complaint does not state facts sufficient to invalidate the Resolution. (Code Civ. Proc. § 430.10, subd. (e); see *Cal. Hous. Fin. Agency v. Patitucci* (1978) 22 Cal.3d 171.)

Second Affirmative Defense

(Limitation—Raised Against City)

No "proposal or application" occasioning validation has occurred. (Health & Saf. Code § 36005.)

Third Affirmative Defense

(Contesting Parties Not Subject to Punitive Action—Raised Against City)

YIMBY "will not be subject to punitive action" for contesting this matter. (Code Civ. Proc. § 861.1.)

Fourth Affirmative Defense

(Writ and Injunctive Relief Not Applicable to YIMBY—Raised Against City)

Because YIMBY did not adopt the Resolution at issue, YIMBY cannot be commanded by a writ nor restrained by an injunction to do or refrain from anything relating to the Resolution.

Fifth Affirmative Defense

(Attorney Fees Not Available to City—Raised Against City)

Section 1021.5 of the Code of Civil Procedure, under which the City prays for attorneys' fees, does not apply "in favor of[] public entities" such as the City. (*City of Carmel-by-the-Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 254–56 [applying Section 1021.5 to bar fee award].)

Dated: January 8, 2024.

YIMBY LAW

By: Keith E. Diggs
Attorney for Yes In My Back Yard

VERIFICATION

I, Sonja Trauss, Executive Director of YES IN MY BACK YARD, swear under penalty of perjury that I have read this Answer and am informed and believe the matters herein to be true. On this oath I allege that the matters stated herein are true.

Dated: January 8, 2024.

YES IN MY BACK YARD

Executed at Oakland, California:

By: Sonja Trauss, Executive Director
YES IN MY BACK YARD