SARAH E. OWSOWITZ, Bar No. 202783
sarah.owsowitz@bbklaw.com
A. PATRICIA URSEA, Bar No. 221637
patricia.ursea@bbklaw.com
MEGAN KILMER, Bar No. 335283
megan.kilmer@bbklaw.com
BEST BEST & KRIEGER LLP
1333 N. California Blvd
Suite 220
Walnut Creek, California 94596
Telephone: (925) 977-3300
Facsimile: (925) 977-1870

Attorneys for Respondent/Defendant
CITY OF SAUSALITO

FILED
Superior Court of California
County of Marin
09/19/2024
James M. Kim, Clerk of the Court
N. Johnson, Deputy

EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

YES IN MY BACK YARD, a California nonprofit public benefit corporation,

Plaintiff and Petitioner,

v.

CITY OF SAUSALITO and DOES 1-20,

Respondents and Defendants.

Case No. CIV-2300652

Filed Under California Environmental Quality Act ("CEQA")

~~[PROPOSED]~~ ORDER REGARDING CITY OF SAUSALITO'S DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE

Date:
Time:
Dept: H

Assigned for All Purposes to Hon. Judge Sheila Lichtblau, Department H

[*Filed concurrently with Notice of Demurrer and Demurrer; Memorandum of Points and Authorities; Declaration of A. Patricia Ursea; Request for Judicial Notice*]

Action Filed: March 8, 2023
Trial Date: Not Set

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

PROPOSED ORDER

On September 11, 2024, at 1:30 p.m., in Department H of the above entitled Court, before the Honorable Sheila Lichtblau, a hearing on Defendant City of Sausalito's ("City") Demurrer to Petitioners' First Amended Verified Petition for Writ of Mandate and Complaint (the "Demurrer") was held. Appearances were noted on the record. After consideration of papers filed, the oral argument of counsel, and all pleadings and records in this case, the Court adopted its tentative ruling, attached hereto and incorporated by reference as Exhibit "A." The Court hereby orders as follows:

1. The City's Demurrer to the Second Cause of Action set forth in the First Amended Verified Petition for Writ of Mandate is SUSTAINED with fifteen (15) days leave to amend.
2. The City's Demurrer to Petitioners' Third Causes of Action is OVERRULED.

IT IS SO ORDERED.



Dated: 09/19/2024, 2024

Honorable Sheila Lichtblau
JUDGE OF THE SUPERIOR COURT

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

Exhibit A

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/11/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV2300652

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PETITIONER: YES IN MY BACKYARD vs. RESPONDENT: CITY OF SAUSALITO	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Respondent City of Sausalito's (the "City") demurrer to Petitioner Yes In My Back Yard's ("Petitioner") First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief is sustained with leave to amend as to the Second Cause of Action. (Code Civ. Proc., § 430.10, subd. (e).) It is overruled with regard to the Third Cause of Action.

BACKGROUND

The Housing Element Law and the Housing Element Adoption Process

Each Californian city and county is required to periodically prepare "a comprehensive, long-term general plan for the physical development of the county or city[.]." (Gov. Code, § 65300.) Every general plan must include a housing element. (Gov. Code, § 65302, subd. (i).) Government Code, section 65580 *et seq.* (the "Housing Element Law") sets forth the requirements for these housing elements. One of the fundamental requirements of a housing element is that it "identify adequate sites for housing . . . and . . . make adequate provision for the existing and projected needs of all economic segments of the community." (Gov. Code, § 65583.)

The California Department of Housing and Community Development ("HCD") administers the Housing Element Law. Housing elements are renewed cyclically. (See Gov. Code, § 65588.) Each renewal cycle, HCD determines the existing and projected need for housing for each region of the state ("regional housing need allocation," or "RHNA"). (Gov. Code, § 65584, subd. (a)(1).) A region's RHNA is then divided up among the localities in the region. Every locality's RHNA is divided up by income level. For example, a city might have an RHNA of 400 homes, of which 100 must be developed to serve the housing needs of "very low income" persons, 100 for "lower income" persons, 100 for "moderate income" persons, and 100 for "above moderate income" persons. (See Gov. Code, §§ 65584, subds. (a)(1), (f).)

A housing element must include "[a]n inventory of land suitable and available for residential development[.]" (Gov. Code, § 65583, subd. (a)(3).) "[L]and suitable and available for residential development" includes not just vacant land, but nonvacant sites with "realistic and demonstrated potential for redevelopment" for housing purposes. (*Ibid.*; see also Gov. Code, § 65583.2, subd. (a)(3)-(4).) Each locality is to use this inventory of land to "identify sites throughout the community . . . that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels[.]" (Gov. Code, § 65583.2.) Each jurisdiction must identify enough such sites to develop the number of homes specified in its RHNA.

To the extent a city includes nonvacant sites in its inventory, the housing element must specify the "additional development potential for each site within the planning period" and explain the methodology used to determine such development potential, which must consider specified factors, including (but not limited to) "the extent to which existing uses may constitute an impediment to additional residential development," "existing . . . contracts that would . . . prevent redevelopment," and "market conditions." (Gov. Code, § 65583.2, subd. (g)(1).) Additionally, where a city relies on nonvacant sites to accommodate 50% or more of its RHNA for lower income households, the methodology used to determine additional development potential must "demonstrate that the existing use [of the site] does not constitute an impediment to additional residential development during the period covered by the housing element." (Gov. Code, § 65583.2, subd. (g)(2).) The existing use is presumed to impede additional residential development "absent findings based on substantial evidence that the use is likely to be discontinued during the planning period." (*Ibid.*)

When a city has finished drafting its housing element, its planning agency must submit the draft to HCD for review before the city adopts it. (Gov. Code, § 65585, subd. (b)(1).) HCD is to determine whether the draft substantially complies with the Housing Element Law. (Gov. Code, § 65585, subd. (d).) If HCD determines that the draft is not substantially compliant, the city must either change the draft to make it substantially compliant or adopt the draft without changes, but with an accompanying explanation of why the city believes the draft in fact complies with the Housing Element Law. (Gov. Code, § 65585, subd. (f).)

Once the city adopts its housing element, it must submit it to HCD again. (Gov. Code, § 65585, subd. (g).) HCD will then review the adopted housing element a second time. (Gov. Code, § 65585, subd. (h).) If HCD finds the housing element substantially compliant with the Housing Element Law, it is rebuttably presumed to be valid in any court action taken to challenge its validity. (Gov. Code, § 65589.3.)

The Petition

The petition alleges that the City violated the Housing Element Law while rushing to develop its Sixth Cycle Housing Element before the January 31, 2023 deadline. (Petition, ¶¶ 27-28.)

The City's RHNA is 724 homes, of which 315 must be lower-income homes. (Petition, ¶¶ 55-56.) On August 12, 2022, the City released a draft housing element for public comment. (*Id.* at ¶ 61.) The draft stated that the City could accommodate development of 508 lower-income homes, but the ability to develop 320 of the 508 would depend on removing certain constraints associated with two City ordinances, Ordinance 1022 and Ordinance 1128 (the "Ordinances").

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

(*Id.* at ¶¶ 63-65.) The draft proposed to have the City fund an election to determine whether the constraints would be removed. (*Id.* at ¶ 66.) On October 22, 2022, the City submitted a revised draft housing element to HCD for review. (Petition, ¶ 75.)

On January 26, 2023, HCD found that the draft housing element the City had submitted to HCD would not substantially comply with the Housing Element Law. (Petition, ¶ 106.) Three days later, on January 29, the City published a new draft housing element. (*Id.* at ¶ 122.) This draft presented "two options" to achieve the City's RHNA, which differed in the number of lower-income homes the City would state it had capacity to develop. (*Id.* at ¶¶ 123-125.) It also acknowledged that 208 of the lower-income homes needed to satisfy the City's RHNA could not be developed unless the Ordinances were changed, and it made no proposals for addressing community opposition that stood as a barrier to changing the Ordinances by a vote. (*Id.* at ¶¶ 128-129.)

The day after the City made this most recent draft available to the public, it voted to adopted the draft as its housing element. (Petition, ¶ 131.) The City published the written, adopted housing element to the public for the first time during the week of February 27, 2023. (*Id.* at ¶ 201.) The housing element claims capacity for 391 lower-income homes, 194 of which it allocates to sites that can only be used for such development if the Ordinances are changed. (*Id.* at ¶¶ 202-203.) It also allocates lower-income housing to sites that have been identified by public commenters as unrealistic for housing development during the period covered by the housing element. (*Id.* at ¶ 204.)

On April 25, 2023, the City submitted a revised version of the newly adopted housing element to HCD. (Petition, ¶ 232.) Days later, HCD advised the City that the modified housing element was in substantial compliance with the Housing Element Law. (*Id.* at ¶ 242.)

Petitioners now seek a writ of mandate compelling the City to bring its housing element into compliance with the Housing Element Law, in addition to other relief. The City demurs to the Petition's Second and Third Causes of Action.

LEGAL STANDARD

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading (including those in any exhibit attached to the pleading) are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568.) A complaint must be liberally construed and all reasonable inferences must be drawn in favor of its allegations. (*Teva Pharmaceuticals USA, Inc. v. Superior Court* (2013) 217 Cal.App.4th 96, 102; see also Code. Civ. Proc., § 452.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.)

DISCUSSION

Second Cause of Action

"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, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." (Code Civ. Proc., § 1085, subd. (a).) "Two basic requirements are essential" to the issuance of a writ under Section 1085: "(1) A clear, present and usually ministerial duty upon the part of the respondent . . . and (2) a clear, present and beneficial right in the petitioner to the performance of that duty." (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491; accord *Hudson v. County of Los Angeles* (2014), 408.) A ministerial duty is one which "a public officer is required to perform . . . in a prescribed manner when a given state of facts exists, in obedience to the mandate of legal authority and without regard to his, her, or its own opinion concerning the act's propriety." (*Hudson*, *supra*, 232 Cal.App.4th 392, 408.)

Petitioner's Second Cause of Action seeks a writ of mandate under Section 1085 compelling the City to bring its housing element into compliance with the Housing Element Law. Petitioner alleges that the City's housing element does not comply with the Housing Element Law because it does not demonstrate realistic development capacity for the City's lower-income RHNA and fails to "remove . . . constraints on the development of housing as required by [Government Code, section 65583, subdivision (c)(3)]." (Petition at ¶¶ 312-313.) The City argues that Petitioner has failed to state a claim with regard to this cause of action.

HCD has found the housing element to be in substantial compliance with the housing element law. (Petition, ¶ 242.) As a result, it is rebuttably presumed to comply with the law. (Gov. Code, § 65589.3.) The parties agree that when alleging a cause of action that is subject to a presumption, if a complaint is to survive a demurrer, it must plead facts which, if proven true, may be sufficient to overcome the presumption. (See *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 682; Memorandum, p. 12; Opposition, p. 13.) The City argues that the presumption of validity can be rebutted only with a showing that HCD's determination of substantial compliance was "clearly erroneous or unauthorized." (Memorandum, p. 12.)

The Court is not persuaded that the "clearly erroneous or unauthorized" standard applies here. A "clear error" standard in the writ relief context appears to be limited to an agency's determination as to pure questions of law – for example, a determination as to what a statute means in general, without regard to the particular facts of a case. (See Asimow et al., Cal. Practice Guide: Administrative Law (The Rutter Group, 2023) 17:124 [explaining that the Supreme Court has demanded that a "clearly erroneous" standard apply to the Public Employment Relations Board's and the Public Employees' Retirement System's statutory

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

interpretations]; *Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1113, fn. 13 ["Consistent administrative interpretation of a statute over a reasonable period of time, particularly by the agency charged with enforcing, implementing and interpreting the statutory scheme, is entitled to great weight. . . . Judicial departure from such administrative construction is warranted only where it is clearly erroneous or unauthorized."].) *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, the sole case the City cites to argue that a "clearly erroneous or unauthorized" standard will apply to this cause of action, applied that standard when reviewing HCD's determination as to the meaning of a statute, a pure question of law. (90 Cal.App.5th 193, 243.) The two cases *Martinez* cited for its own application of the "clearly erroneous or unauthorized" standard likewise applied that standard to HCD's interpretation of a statute. (See *Hoffmaster*, *supra*, 55 Cal.App.4th 1098, 1113, fn. 13; *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 398.) The questions presented by the petition's Second Cause of Action are not pure questions of law because they cannot be answered without reference to the specifics of the City's housing element. (See Asimow et al., *supra*, § 17:5.)

More fundamentally, regardless of what standard of review applies, the Court is not convinced that the petition must state facts that address the specifics of HCD's substantial compliance finding and show that HCD's analysis was somehow flawed. (See, e.g., Memorandum, p. 14 ["[T]he Petition is completely void of any facts demonstrating that HCD's approval of Program 4 is clearly erroneous or unauthorized[.] . . . [It] does not convey which of HCD's extensive findings were erroneous, lacked evidentiary support or [was] contrary to law."].) The petition's Second Cause of Action does not request that the Court review any action taken or determination made by HCD. It requests that the Court issue a traditional writ of mandamus compelling *the City*, the sole respondent in this case, to correct its alleged failure to comply with the mandatory requirements of the housing element law. If this case proceeds far enough, at some point, the Court will surely have to consider the substance of HCD's determinations as to the City's housing element, as HCD's judgment will bear on a judicial determination of whether the housing element in fact complies with the law or not. But at this stage, HCD's substantial compliance determination is only relevant in that it triggered Government Code, section 65589.3's presumption of validity.

In order to plead a cause of action for a traditional writ of mandate on the ground that the City's housing element does not comply with the housing element law, Petitioner must plead facts that, if true, would prove that the City's housing element does not, in fact, comply with the housing element law, regardless of what HCD has said on that issue. The City has not cited any authority supporting the idea that Petitioner has any greater burden than that at this stage.

The petition asserts that the City's housing element claims capacity for 391 lower-income homes, 76 more than the 315 required. (Petition, ¶ 202.) Petitioner's claim that the City has failed to demonstrate that the sites have "realistic development capacity" during the period covered by the housing element rests on allegations that public commenters and industry professionals have determined that several of the sites face tremendous barriers to development. For example, the petition alleges that the housing element allocates 74 lower-income homes to Site 84, which, according to an industry professional, has a $-35.2 million residual land value; is the site of a school, raising questions about where the residential units are supposed to go; and is of a size that violates a statutory limit on the size of lower-income opportunity sites. (Petition, ¶¶ 211-212.) It further alleges that 194 lower-income homes are allocated to sites that can only be

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

developed if Ordinances 1022 and 1128 are repealed, which will require voter approval. (*Id.* at ¶ 66, 203.) 57 lower-income homes are allocated to Site 202. (*Id.* at ¶ 220.) An industry professional has opined that building housing at Site 202 would require the housing to be placed "in the middle of multi million dollar single family homes" and is encumbered by existing leases until 2028, in addition to having a -$14.4 million residual land value. (*Id.* at ¶¶ 220-221.)

These facts, taken as true, do not establish a violation of Government Code, section 65583.2, subdivision (g), the provision of the housing element governing how a city is to demonstrate realistic development capacity. That provision establishes that a city must determine the development potential for each site and do so in a manner that considers specified factors. The city must include in its housing element an explanation of the method by which it determined that development potential; and, to the extent the city is relying on nonvacant sites to meet 50% or more of its RHNA for lower income households, make findings based on substantial evidence that the existing use of the site is likely to be discontinued during the planning period. (Gov. Code, § 65583.2, subd. (g).) The petition does not allege that the City or its housing element failed to do any of these things.[1] Nowhere in the petition is it actually alleged that the City did not consider the required factors or did not include in its housing element findings based on substantial evidence as to the nonvacant sites. The Court cannot read the presence of those critical allegations into the petition based on allegations that the public has identified circumstances that make it seem unlikely that some of these sites can be redeveloped.

The other portion of the Second Cause of Action alleges that the housing element does not comply with the housing element law because it does not "[a]ddress and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the . . . development of housing." (Gov. Code, § 65583, subd. (c)(3); Petition, ¶ 313.) The City reads this allegation to target the City's alleged failure to repeal or revise Ordinances 1022 and 1128, and Petitioner does not contest that understanding. (Memorandum, p. 14.) The petition does not assert facts supporting the idea that it was legally possible for the City's housing element to effect a change in or repeal of these ordinances, and that idea runs contrary to the petition's allegations that changing the Ordinances requires voter approval.

The Court sustains the demurrer as to this cause of action with leave to amend.

Third Cause of Action

On January 25, 2024, the City released a draft Environmental Impact Report (the "Draft EIR") to evaluate components of the housing element "whose implementation could result in a physical change to the environment." (Petition, ¶ 250.) The Draft EIR identified the housing element's Program 19, which the Draft EIR stated "would result in the development and publication of Objective Design and Development Standards (ODDS) to address multifamily development at densities envisioned by the General Plan, Zoning Code, and Program 4." (*Id.* at ¶ 251.) The petition alleges that the Sixth Cycle Housing Element committed the City to "implementing"

[1] The Court notes the allegation that "[t]he City Council was unable . . . to finalize a plan for allocating the lower-income homes it needed to ensure an adequate buffer at all times between 2023-2031" and "voted instead to delegate this task . . . to staff" after adoption of the housing element. (Petition, ¶¶ 146-147.) The petition concedes that a "buffer" designed to ensure a city does not fail to meet its RHNA at any point during a given planning period is an HCD recommendation, not a binding statutory obligation. (*Id.* at ¶ 53.)

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

Program 19 by November 2023 and to "completing Program 19 by January 2024[.]" (*Id.* at ¶¶ 253, 321.)

On April 4, 2024, HCD allegedly sent the City a letter reminding the City that it was legally obligated to timely implement Program 19. (Petition, ¶¶ 254, 257.) HCD characterized Program 19 as "commit[ting] the City to adopt ODDS that would accommodate the maximum densities proposed to meet its RHNA and streamline the approval process for housing developments[,]" which was consistent with how the City described Program 19 in the Draft EIR. (*Id.* at ¶ 255.)

In its May 9, 2024 response to HCD's letter, the City allegedly took the position that it had already implemented Program 19 by adopting Resolution No. 6059 on July 13, 2021, which "identif[ied] existing objective standards . . . that are generally applicable throughout the jurisdiction[.]" (Petition, ¶ 260.) The petition alleges that Program 19 requires the City to create *new* ODDS designed to accommodate more housing, and the City did not implement Program 19 by identifying existing standards 18 months before the housing element was adopted. (See *id.* at ¶¶ 260-261.) Petitioner's Third Cause of Action seeks a writ of mandate compelling the City to implement Program 19. (Petition, ¶ 320.)

The City argues that this claim is not ripe because the City has not yet failed to implement Program 19. Determining ripeness involves a two-pronged analysis considering "(1) whether the dispute is sufficiently "definite and concrete" such that a judgment would not constitute an advisory opinion, and (2) whether withholding judicial consideration until a later date would result in a hardship to the parties." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 172; see also *Communities for a Better Environment v. State Energy Resources Conservation & Development Commission* (2017) 19 Cal.App.5th 725, 733-734.) Under the first prong, a dispute is not ripe if it asks the court to speculate on how it would resolve a hypothetical situation. (*Communities for a Better Environment*, *supra*, 19 Cal.App.5th 725, 734.) The second prong dictates that the case is not ripe if it involves a mere difference of opinion as opposed to a controversy with concrete consequences to the parties. (*Ibid.*)

Program 19, as described in the housing element, consists first of updating the City's Municipal Code "to ensure that eligible multi-family projects with an affordable housing component are provided streamlined review and are subject only to objective design standards consistent with the relevant provisions of SB 35 and SB 330[.]" (Resp. RJN,[2] Ex. A, p. HP-30.) The housing element stated that at the time of its drafting, the City was "in the process of preparing" ODDS in connection with this portion of Project 19, which would "address multi-family development at densities envisioned by the General Plan, Zoning Code, and Program 4." (*Ibid.*) Program 4 is the portion of the housing element designed to identify sites adequate to meet the City's RHNA. (*Id.* at p. HP-10.) The Court infers from this that this portion of Program 19 required the City to develop ODDS designed to accommodate Program 4 and so could not have been executed before Program 4 existed.

---

[2] Both parties' requests for judicial notice are granted. (Evid. Code, § 452, subd. (b), (c); see also *Citizens' Committee to Complete the Refuge v. City of Newark* (2021) 74 Cal.App.5th 460, 465, fn. 2 [judicially noting official act of a municipality under these two subdivisions].)

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

The housing element states that this portion of Program 19 shall be done "[w]ithin 1 year of Housing Element adoption, and no later than November 2023[.]" (Resp. RJN, Ex. A, p. HP-31.) The petition alleges that the City has taken the position that it completed Program 19 in its entirety, over a year before the housing element containing Programs 19 and 4 was even adopted, by adopting a resolution that identified preexisting standards. (Petition, ¶ 260.) The Court infers from this that the City did not develop any ODDS specifically responsive to Program 4 as required by this initial portion of Program 19. The petition sufficiently alleges that the City has already failed to execute the portion of its housing element that was due to be complete "no later than November 2023." (Resp. RJN, Ex. A, p. HP-31; Petition, ¶ 260.)

The City argues that it has until January 30, 2026 to complete implementation of Program 19 in its entirety. However, the City does not explain why it would be excused from complying with the interim deadlines set by its housing element. A city has a duty to "comply with its housing element" (see Gov. Code, § 65587, subd. (c)), and that entails complying with deadlines set by the housing element (see Gov. Code, § 65587, subd. (d)(2) [entitling "[a]ny interested person" to "bring an action to compel compliance with the *deadlines* and requirements" a city sets in its housing element's schedule of actions and implementation timeline] [emphasis added].) If the city has failed to meet a clear deadline applicable to a program, or portion thereof, included in its housing element, it has failed to execute that program regardless of whether it would have been entitled to more time by statute had the housing element itself not bound the city to a tighter timeline.

As to the second prong of the ripeness inquiry, the petition alleges that members of the Petitioner nonprofit are affected by the City's housing element and the City has failed to comply with its own housing element's deadlines as required by state law. (Petition, ¶¶ 15, 260.) The City has not cited any authority establishing that more must be alleged before furthering delaying adjudication of this dispute can be deemed to result in "an imminent and significant hardship" to Petitioner. (*Farm Sanctuary, Inc. v. Dept. of Food and Agriculture* (1998) 63 Cal.App.4th 496, 502.) *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, is distinguishable. There, the plaintiff sought a declaratory judgment stating that the defendant city had effected a taking of the plaintiff's property for public use, notwithstanding that that city had merely *proposed* a public works project passing through the plaintiff's land in a manner that was "tentative and subject to change." (10 Cal.3d 110, 118.) Here, the violation that is the subject of Petitioner's Third Cause of Action has allegedly already occurred.

In summary, the Court is not persuaded by the City's ripeness argument and overrules the demurrer as to this cause of action.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

The Zoom appearance information for September, 2024 is as follows:
Zoom link for Courtroom H CIVIL 160 781 1385 passcode 082614
Meeting ID: 160 781 1385
Passcode: 082614

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
1333 N. CALIFORNIA BLVD., SUITE 220
WALNUT CREEK, CALIFORNIA 94596

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CALIFORNIA 94596

PROOF OF SERVICE

I, Irene Islas, declare:

I am a citizen of the United States and employed in Contra Costa County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1333 N. California Blvd., Ste. 220, Walnut Creek, CA 94596. On September 16, 2024, I served a copy of the within document(s):

[PROPOSED] ORDER REGARDING CITY OF SAUSALITO'S DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Riverside, California addressed as set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Ryan J. Patterson
Brian O'Neill
Ryan J. Patterson
Brian O'Neill
PATTERSON & O'NEILL, PC
235 Montgomery Street, Suite 950
San Francisco, CA 94108
Phone: (415) 907-9110
Email: ryan@pattersononeill.com; brian@pattersononeill.com

Attorneys for Petitioner-Plaintiff
YES IN MY BACKYARD

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 16, 2024, at Walnut Creek, California.

Irene Islas