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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF ORANGE

11 NEWPORT BEACH STEWARDSHIP
12 ASSOCIATION,
13 Petitioner and Plaintiff,
14 v.
15 CITY OF NEWPORT BEACH,
16 Respondent and Defendant.

Case No. 30-2024-01428295-CU-WM-CXC

**NOTICE OF MOTION AND MOTION
FOR JUDGMENT**

Date: April 24, 2025
Time: 2:00 p.m.
Dept.: CX104
Judge: Hon. Melissa R. McCormick

Date Filed: September 24, 2024

Reservation Number: 74440753

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 24, 2025 at 2:00 p.m., before the Honorable
3 Melissa McCormick in Department CX-104 of the Superior Court of the State of California,
4 County of Orange located at Civil Complex Center, 751 West Santa Ana Blvd., Santa Ana, CA
5 92701, Petitioner Newport Beach Stewardship Association (“NBSA”) will and hereby does move
6 this Court for Judgment on NBSA’s Verified Petition for Writ of Mandate and Complaint for
7 Declaratory Relief pursuant to Code of Civil Procedure 1094. Because there is no dispute of
8 material fact, “[th]is matter may be determined by the court by noticed motion of any party for a
9 judgment on the peremptory writ.” (Code Civ. Proc. § 1094.) NBSA further seeks declaratory
10 relief through this motion because such relief “is appropriate in a mandamus action.” (*Malott v.*
11 *Summerland Sanitary Dist.* (2020) 55 Cal.App.5th 1102, 1109.)

12 This motion is made on the grounds that Respondent and Defendant City of Newport
13 Beach (the “City”) violated the requirement in Section 423 of the City Charter that any
14 amendments to the City’s General Plan that allows for the development of 100 dwelling units or
15 more be approved by a vote of the residents of Newport Beach. In July 2024, the City passed an
16 ordinance that amended the Land Use Element of the City’s General Plan to allow for the
17 development of over 8,000 new dwelling units without first obtaining voter approval under
18 Section 423, and further passed an ordinance that amended the City’s Housing Element to remove
19 the requirement for such voter approval. The City attempted to support its decision by invoking
20 an exception to Section 423 for situations where state law “precludes” a vote of the residents of
21 Newport Beach. That decision is entirely unsupported. The City’s claimed bases for
22 “preclusion”—e.g., that voters may disapprove of the proposed amendments, resulting in
23 potential consequences for the City such as a finding that the City is no longer in “substantial
24 compliance” with State Housing Element law or potential use of the so-called “builder’s
25 remedy”—are entirely speculative and based on a mischaracterization of state law.

26 NBSA thus respectfully requests that the Court issue a writ of mandate that:

- 27 (1) directs the City of Newport Beach to set aside Resolution No. 2024-51, which enacted
28 an amendment to the City of Newport Beach’s General Plan Land Use Element

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without a Section 423 vote;

- (2) directs the City of Newport Beach to set aside Resolution Nos. 2024-58 and Resolution No. 2024-73, which adopted an amendment to the City of Newport Beach’s Sixth Cycle Housing Element to remove a Section 423 vote requirement for its implementation; and
- (3) requires the City of Newport Beach to submit the proposed amendments to the Land Use Element to a Section 423 vote.

NBSA further requests that the Court provide the following declaration regarding state law:

- The City will remain in substantial compliance with state housing laws even if it misses the February 12, 2025 deadline to implement the Housing Element if such delay is caused by an attempt to obtain voter approval under Section 423 and the City has proposed and has made good faith efforts to implement a plan for obtaining such approval on a reasonable timeline; and
- The City may reject builder’s remedy applications submitted pursuant to Government Code § 65589.5 to the extent such applications are based on the City’s purported failure to meet the February 12, 2025 deadline for implementation of the Housing Element, and so long as the City has proposed and makes good faith efforts to obtain voter approval under Section 423 on a reasonable timeline.

These declarations of state law incorporate a reasonable time frame for the City to obtain voter approval under Section 423, and thus NBSA requests that the Court retain jurisdiction to ensure that the City creates and follows a plan for obtaining Section 423 voter approval on a reasonable timeline. (*City of Carmel-By-The-Sea v. Bd. of Supervisors* (1982) 137 Cal.App.3d 964, 971.)

This motion is based on this Notice of Motion and Motion, as well as the concurrently filed Memorandum of Points and Authorities, the Proposed Order, the Proposed Writ of Mandate, the Declaration of Bailey W. Heaps in Support of Motion for Judgment; Movant’s Index (referred

1 to throughout as “Movant’s Index” or “MI”), Exhibit Volumes I through XXI, the Request for
2 Judicial Notice, NBSA’s previously filed Verified Petition and Complaint, all files and records in
3 this action, and such other evidence and argument as may be permitted.

4 Dated: December 4, 2024

KEKER, VAN NEST & PETERS LLP

6 By: /s/ Bailey W. Heaps

BAILEY W. HEAPS

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