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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
14 Plaintiff,

15 v.
16 CITY OF NEWPORT BEACH,

17 Respondent and
18 Defendant.
19
20

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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF 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

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(2006) 38 Cal.4th 113, 16

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(2014) 224 Cal.App.4th 26213

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(2006) 138 Cal.App.4th 17216

1	<i>Trinity Park, L.P. v. City of Sunnyvale</i>	
2	(2011) 193 Cal.App.4th 1014	13
3	<i>United Neighborhoods for Los Angeles v. City of Los Angeles</i>	
4	(2023) 93 Cal.App.5th 1074	14
5	<i>Vargas v. City of Salinas</i>	
6	(2009) 46 Cal.4th 1	18
7	<i>Yumori-Kaku v. City of Santa Clara</i>	
8	(2020) 59 Cal.App.5th 385	18
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10	Cal. Evid. Code § 200	13
11	Cal. Evid. Code § 452	<i>passim</i>

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1 **REQUEST FOR JUDICIAL NOTICE**

2 In support of Petitioner and Plaintiff Newport Beach Stewardship Association’s
3 (“NBSA’s”) Motion for Judgment, and pursuant to Evidence Code sections 452 and 453, NBSA
4 requests that this Court take judicial notice of documents providing the factual basis for its
5 Petition for Writ of Mandate and Complaint for Declaratory Relief and its concurrently filed
6 Motion for Judgment. Specifically, NBSA seeks judicial notice of ordinances and City Council
7 deliberations leading up to and following the City of Newport Beach’s (the “City’s”) violation of
8 Section 423 of the City’s Charter, which are attached to the concurrently filed Movant’s Index of
9 Exhibits:

10 **Legislative Enactments**

- 11 • **Exhibit 71:** Section 423 of the City of Newport Beach City Charter, available at
12 <https://www.codepublishing.com/CA/NewportBeach/#!/NewportBeachCH.html#04.423>.
- 13 • **Exhibit 15:** City Council Resolution No. 2022-60, which amended and adopted the Sixth
14 Cycle Housing Element on September 13, 2022, available at
15 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833875&dbid=0&repo=CNB>.
- 16 • **Exhibit 60:** Amended City of Newport Beach Housing Element, adopted pursuant to City
17 Council Resolution No. 2024-58 and 2024-73 on July 23, 2024 and September 24, 2024,
18 respectively, available at
19 [https://www.newportbeachca.gov/government/departments/community-
20 development/planning-division/general-plan-codes-and-regulations/general-plan-
21 update/housing-element-screencheck-draft-march-10-2020](https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/general-plan-update/housing-element-screencheck-draft-march-10-2020).
- 22 • **Exhibit 48:** Amended City of Newport Beach Land Use Element, adopted pursuant to City
23 Council Resolution No. 2024-51 on July 23, 2024, available at
24 https://www.newportbeachca.gov/PLN/General_Plan/04_Ch3_LandUse_web.pdf.
- 25 • **Exhibit 23:** City Council Resolution No. 2024-32, providing notice of necessary zoning
26 changes to the Orange County Airport Land Use Commission for the Housing Element
27 implementation on May 28, 2024, available at
28 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3004538&dbid=0&repo=CNB>.
- **Exhibit 42:** City Council Resolution No. 2024-50, certifying the Environmental Impact
Report related to the Housing Element implementation on July 23, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038657&dbid=0&repo=CNB>.
- **Exhibit 49:** City Council Resolution No. 2024-51, amending the City of Newport Beach’s
Land Use Element on July 23, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038659&dbid=0&repo=CNB>.
- **Exhibit 50:** City Council Resolution No. 2024-52, providing notice to California Coastal
Commission of zoning changes related to Housing Element adoption on July 23, 2024,
available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038660&dbid=0&repo=CNB>.

- 1 • **Exhibit 38:** City Council Resolution No. 2024-58, initiating the process to amend the
2 Housing Element on July 23, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038662&dbid=0&repo=CNB>.
- 3 • **Exhibit 70:** City Council Resolution No. 2024-73, adopting the amended Housing Element
4 that eliminates a Section 423 vote, on September 24, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061225&dbid=0&repo=CNB>.
- 5 • **Exhibit 51:** City Ordinance No. 2024-16, modifying the city’s municipal code regarding
6 zoning on September 24, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061231&dbid=0&repo=CNB>.
- 7 • **Exhibit 52:** City Ordinance No. 2024-17, amending title 20 (planning and zoning) and
8 adopting objective development standards, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061230&dbid=0&repo=CNB>.
- 9 • **Exhibit 59:** Planning Commission Resolution No. PC2024-019, on September 5, 2024,
10 available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3062791&dbid=0&repo=CNB>.
- 11 • **Exhibit 21:** Planning Commission Resolution No. PC2024-006, on April 14, 2024,
12 available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3012085&dbid=0&repo=CNB>.

13 **Agenda Packet for September 13, 2022 City Council Meeting**

- 14 • **Exhibit 1:** Correspondence to the City Council providing comments on the proposed
15 housing element in advance of the September 13, 2022 City Council meeting, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833863&dbid=0&repo=CNB>.
- 16 • **Exhibit 2:** City Council Staff Report titled “Ordinance No. 2022-18: A Code Amendment
17 Updating Density Bonus Regulations to Comply with State Law (PA2020-032)” that was
18 prepared by the City’s Principal Planner, Jaime Murillo, in connection with the September
13, 2022 City Council meeting, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833796&dbid=0&repo=CNB>.
- 19 • **Exhibit 3:** Overview of the City Council meeting agenda from September 13, 2022 titled
20 “On the Agenda: City Council Meeting for Sept. 13,” available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833860&dbid=0&repo=CNB>.
- 21 • **Exhibit 4:** Presentation titled “2021-2029 6th Cycle Final Housing Element,” dated
22 September 13, 2022, and prepared by the City’s Community Development Department,
23 available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833865&dbid=0&repo=CNB>.
- 24 • **Exhibit 5:** Handout titled “Item 18 Resolution No. 2022-60: Amending and Re-Adopting
25 the 2021-2029 6th Cycle Housing Element,” dated September 13, 2022, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833869&dbid=0&repo=CNB>.
- 26 • **Exhibit 6:** “September 13, 2022, City Council Agenda Comments” submitted by Jim
27 Mosher of Newport Beach, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833861&dbid=0&repo=CNB>.

- 1 • **Exhibit 7:** City Council Agenda for the September 13, 2022 City Council meeting,
2 available at
3 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833840&dbid=0&repo=CNB>.
- 4 • **Exhibit 8:** Amended City Council Meeting Minutes from the August 23, 2022 City
5 Council Meeting, available at
6 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833862&dbid=0&repo=CNB>.
- 7 • **Exhibit 9:** Draft City Council Meeting Minutes from the Study Session and Regular
8 Meeting on August 23, 2022, available at
9 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833802&dbid=0&repo=CNB>.
- 10 • **Exhibit 10:** City Council Staff Report titled “Resolution No. 2022-59: Creating the
11 General Plan Advisory Committee (GPAC)” prepared by the City’s Principal Planner,
12 Benjamin M. Zdeba, and dated September 13, 2022, available at
13 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833810&dbid=0&repo=CNB>.
- 14 • **Exhibit 11:** City Council Staff Report titled “Resolution No. 2022-60: Amending and Re-
15 Adopting the 2021-2029 6th Cycle Housing Element” that was prepared by the City’s
16 Senior Planner, Benjamin M. Zdeba, and Deputy Community Development Director, Jim
17 Campbell, in connection with the September 13, 2022 City Council meeting, available at
18 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2833796&dbid=0&repo=CNB>.
- 19 • **Exhibit 13:** Notice of Public Hearing from the City regarding the September 13, 2022 City
20 Council meeting, available at
21 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2834173&dbid=0&repo=CNB>.

Agenda Packet for April 18, 2024 Planning Commission Meeting

- 22 • **Exhibit 16:** Letter from Melinda Coy, Proactive Housing Accountability Chief of the
23 California Department of Housing and Community Development, to Grace K. Leung, City
24 Manager of the City of Newport Beach, regarding “City of Newport Beach 6th Cycle
25 (2021-2029) Adopted Housing Element, dated October 5, 2022, available at
26 [https://www.newportbeachca.gov/home/showpublisheddocument/72517/63800639758447
0000](https://www.newportbeachca.gov/home/showpublisheddocument/72517/638006397584470000).
- 27 • **Exhibit 17:** City Planning Commission Staff Report regarding “Housing Element
28 Implementation Program Amendments (PA2022-0245) that was prepared by the City’s
principal planner, Benjamin M. Zdeba, and Acting Deputy Community Development
Director, Jaime Murillo, dated April 18, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2954635&dbid=0&repo=CNB>.
- **Exhibit 18:** City Planning Commission Agenda from the April 18, 2024 Planning
Commission meeting, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2954621&dbid=0&repo=CNB>.

Agenda Packet for July 9, 2024 City Council Meeting

- **Exhibit 24:** City Council Agenda from the July 9, 2024 City Council meeting, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3031028&dbid=0&repo=CNB>.
- **Exhibit 25:** City Council Meeting Minutes from the Study Session and Regular Meeting
on July 9, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038655&dbid=0&repo=CNB>.

- 1 • **Exhibit 26:** City Council Agenda Comments on items on the agenda for the July 9, 2024
2 City Council Meeting, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3031077&dbid=0&repo=CNB>.
- 3 • **Exhibit 27:** Correspondence to the City Council regarding the July 9, 2024 City Council
4 meeting, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3031076&dbid=0&repo=CNB>.
- 5 • **Exhibit 28:** Presentation titled “Implementation of the Housing Element and Charter
6 Section 423” prepared by the Community Development Department for the City Council
7 Study Session on July 9, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3031110&dbid=0&repo=CNB>.

8 **Agenda Packet for July 23, 2024 City Council Meeting**

- 9 • **Exhibit 22:** Handout titled “California Housing Legislative Highlights,” which is part of
10 the July 23, 2024 City Council meeting agenda packet, available at
[https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038623&dbid=0&repo=CNB](https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038623&dbid=0&repo=CNB&cr=1)
&cr=1.
- 11 • **Exhibit 30:** Letter from Jennifer L. Keller to Mayor Will O’Neill and the Newport Beach
12 City Council regarding “Voter approval of Newport Beach’s Certified Sixth Cycle Housing
13 Element under Charter Section 423,” dated July 22, 2024, available at
[https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038580&dbid=0&repo=CNB](https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038580&dbid=0&repo=CNB&cr=1)
&cr=1
- 14 • **Exhibit 31:** Weekly Newsletter from City Manager Grace K. Leung titled “The Week in
15 Review,” available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038581&dbid=0&repo=CNB>.
- 16 • **Exhibit 32:** Presentation titled a “A Brief Timeline” regarding the Housing Element,
17 available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038624&dbid=0&repo=CNB>.
- 18 • **Exhibit 33:** Letter from Marshal “Duffy” Duffield, former City Council member and
19 Mayor, and Joy Brenner, former City Council member, to Mayor Will O’Neil and
20 members of the City Council, dated July 23, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038652&dbid=0&repo=CNB>.
- 21 • **Exhibit 34:** City Council Agenda from the July 23, 2024 City Council meeting, available
22 at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038502&dbid=0&repo=CNB>.
- 23 • **Exhibit 35:** Amended City Council Meeting Minutes from the Study Session and Regular
24 Meeting on July 9, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038571&dbid=0&repo=CNB>.
- 25 • **Exhibit 37:** City Council Resolution No. 2024-53, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038661&dbid=0&repo=CNB>.
- 26 • **Exhibit 39:** City Council Staff Report regarding “Ordinance Nos. 2024-16 and 2024-17,
27 and Resolution Nos. 2024-50 to 2024-57 for the Necessary Amendments to Implement the
28 6th Housing Cycle Housing Element and to Place the Major General Plan Amendment on
the November 5, 2024 General Election Ballot Pursuant to City Charter Section 423; or

1 Resolution N0. 2024-58 to Initiate an Amendment to the 6th Cycle Housing Element,”
2 dated July 23, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038514&dbid=0&repo=CNB>.

- 3 • **Exhibit 40:** City Council Staff Report regarding “Ordinance Nos. 2024-16 and 2024-17,
4 and Resolution Nos. 2024-50 to 2024-57 for the Necessary Amendments to Implement the
5 6th Cycle Housing Element and to Place the Major General Plan Amendment on the
6 November 5, 2024 General Election Ballot Pursuant to City Charter Section 423; or
7 Resolution N0. 2024-58 to Initiate an Amendment to the 6th Cycle Housing Element,”
8 dated July 23, 2024, available at
9 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038514&dbid=0&repo=CNB>
- 10 • **Exhibit 41:** Compilation of City Council Agenda Comments on items on the agenda from
11 the July 23, 2024 City Council meeting, available at
12 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038582&dbid=0&repo=CNB>.
- 13 • **Exhibit 43:** Presentation titled “Housing Element Implementation Program Amendments
14 (PA2022-0245),” by the Community Development Department for the July 23, 2024 City
15 Council Public Hearing, available at
16 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038626&dbid=0&repo=CNB>.
- 17 • **Exhibit 44:** Map titled “Irvine Business Complex (IBC) Existing and Under
18 Const./Planned Multifamily Projects,” available at
19 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038622&dbid=0&repo=CNB>.
- 20 • **Exhibit 45:** Correspondence regarding the July 23, 2024 City Council meeting, available at
21 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038580&dbid=0&repo=CNB>.
- 22 • **Exhibit 46:** City Notice of Public Hearing regarding the July 23, 2024 City Council
23 Meeting, available at
24 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3031228&dbid=0&repo=CNB>.
- 25 • **Agenda Packet for September 5, 2024 Planning Commission Meeting**
- 26 • **Exhibit 53:** Presentation titled “Housing Element Amendment (PA2022-0245)” that was
27 prepared for the September 5, 2024 Planning Commission Public Hearing, available at
28 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3054185&dbid=0&repo=CNB>.
- **Exhibit 54:** Planning Commission Staff Report regarding “Amendment to the 6th Cycle
Housing Element (PA2022-0245),” available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3054184&dbid=0&repo=CNB>.
- **Exhibit 55:** Planning Commission Agenda from the meeting on September 5, 2024,
available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3054178&dbid=0&repo=CNB>.
- **Exhibit 57:** Tentative Agenda Report from August 31, 2024 through December 3, 2024,
available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3054186&dbid=0&repo=CNB>.

1 **Agenda Packet for September 24, 2024 City Council Meeting**

- 2 • **Exhibit 61:** Compilation of City Council Agenda Comments for the September 24, 2024
3 City Council meeting, available at
4 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061203&dbid=0&repo=CNB>.
- 5 • **Exhibit 62:** City Council Agenda from the September 24, 2024 City Council meeting,
6 available at
7 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061108&dbid=0&repo=CNB>.
- 8 • **Exhibit 64:** City Council Staff Report regarding “Resolution No. 2024-73: Amending
9 Portions of the Adopted and Certified 6th Cycle Housing Element, and Ordinance Nos.
10 2024-16 and 2024-17: Amending Title 20 (Planning and Zoning) to Create the Housing
11 Opportunity (HO) Overlay Zoning Districts and Establish Multi-Unit Objective Design
12 Standards (PA2022-0245),” available at
13 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061133&dbid=0&repo=CNB>.
- 14 • **Exhibit 65:** Compilation of correspondence to the City regarding the City Council meeting
15 on September 24, 2024, available at
16 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061198&dbid=0&repo=CNB>.
- 17 • **Exhibit 66:** Presentation titled “Housing Element Amendment and Implementation
18 (PA2022-0245),” dated September 24, 2024 from the Community Development
19 Department, available at
20 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3063320&dbid=0&repo=CNB>.
- 21 • **Exhibit 67:** Notice of Public Hearing for the September 24, 2024 City Council Meeting,
22 available at
23 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061216&dbid=0&repo=CNB>.
- 24 • **Exhibit 68:** Article titled “On the Agenda: September 24 City Council Meeting.” This
25 article is part of the agenda packet for the September 24, 2024 City Council meeting and is
26 publicly available on the City’s official website at
27 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3061201&dbid=0&repo=CNB>.

19 **Approved Minutes of City Council and Planning Commission Meetings**

- 20 • **Exhibit 12:** Approved City Council meeting minutes from the September 13, 2022
21 meeting, available at
22 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2835894&dbid=0&repo=CNB>.
- 23 • **Exhibit 19:** Approved City Planning Commission meeting minutes from the April 18,
24 2024 meeting, available at
25 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3012080&dbid=0&repo=CNB>.
- 26 • **Exhibit 25:** Approved City Council Meeting Minutes from the Study Session and Regular
27 Meeting on July 9, 2024, available at
28 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3038655&dbid=0&repo=CNB>.
- **Exhibit 36:** Approved City Council Meeting Minutes from the Study Session and Regular
Meeting on July 23, 2024, available at
<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3049492&dbid=0&repo=CNB>.

- 1 • **Exhibit 56:** Approved Planning Commission meeting minutes from the September 5, 2024
2 meeting, available at
3 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3064487&dbid=0&repo=CNB>.
- 4 • **Exhibit 63:** Approved City Council meeting minutes from the September 24, 2024
5 meeting, available at
6 <https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=3063951&dbid=0&repo=CNB>.

Video recordings of City Council and Planning Commission Meetings

- 7 • **Exhibit 14:** Video recording of the September 13, 2022 City Council meeting. This video
8 is available on the City’s official website at
9 <https://ecms.newportbeachca.gov/WEB/Browse.aspx?id=2833833&dbid=0&repo=CNB>.
- 10 • **Exhibit 20:** Video recording of the April 18, 2024 Planning Commission meeting. This
11 video recording is publicly available on the City’s official website at
12 [https://newportbeach.granicus.com/player/clip/4355?publish_id=644e4e03-fe5e-11ee-
b231-0050569183fa&redirect=true](https://newportbeach.granicus.com/player/clip/4355?publish_id=644e4e03-fe5e-11ee-b231-0050569183fa&redirect=true).
- 13 • **Exhibit 30:** Video recording of the July 9, 2024 City Council Meeting. The video
14 recording is available on the City’s official website at
15 <https://newportbeach.granicus.com/player/clip/4385?redirect=true>.
- 16 • **Exhibit 48:** Video recording of the July 23, 2024 City Council meeting, which is publicly
17 available on the City’s official website at
18 <https://newportbeach.granicus.com/player/clip/4387?redirect=true>.
- 19 • **Exhibit 58:** Video recording of the September 5, 2024 Planning Commission meeting.
20 This video recording is publicly available on the City’s official website at
21 [https://newportbeach.granicus.com/player/clip/4401?publish_id=6090a9c7-6c5e-11ef-
9b71-005056a89546&redirect=true](https://newportbeach.granicus.com/player/clip/4401?publish_id=6090a9c7-6c5e-11ef-9b71-005056a89546&redirect=true).
- 22 • **Exhibit 69:** Video recording of the September 24, 2024 City Council meeting that is
23 publicly available on the City’s website at
24 <https://newportbeach.granicus.com/player/clip/4408?redirect=true>.

Ballot Measures from other cities

- 25 • **Exhibit 72:** Yorba Linda Ballot Measure JJ, available at
26 [https://ocvote.gov/sites/default/files/elections/gen2024/measures/layouts/YLIN%20-
%20JJ%20-%20LAYOUT%20-%20TP%2C%20FT%2C%20IA%2C%20AF.pdf](https://ocvote.gov/sites/default/files/elections/gen2024/measures/layouts/YLIN%20-%20JJ%20-%20LAYOUT%20-%20TP%2C%20FT%2C%20IA%2C%20AF.pdf).
- 27 • **Exhibit 73:** City of Cypress Measure S,
28 [https://ocvote.org/sites/default/files/elections/gen2024/measures/layouts/CYPR%20-
%20S%20-%20LAYOUT%20-%20TP%2C%20IA%2C%20AF%2C%20RAF%2C%20AA%2C%20RAA.pdf](https://ocvote.org/sites/default/files/elections/gen2024/measures/layouts/CYPR%20-%20S%20-%20LAYOUT%20-%20TP%2C%20IA%2C%20AF%2C%20RAF%2C%20AA%2C%20RAA.pdf)
- **Exhibit 74:** Unofficial Election Results, Orange County Registrar of Voters, available at
<https://ocvote.gov/results/current-election-results>.

California Superior Court order

- **Exhibit 75:** December 12, 2018 order in *Building Industry Association of San Diego County v. City of Encinitas*, Case No. 37-2017-00023267-CU-WM-NC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner Newport Beach Stewardship Association (“NBSA”) requests that the Court take
4 judicial notice of Exhibits 1-75 to Movant’s Index of Exhibits (“MI”), which is filed concurrently
5 herewith, pursuant to California Code of Evidence § 452, subdivisions (b) and (h). Those
6 documents fall into the following categories:

7 (1) Legislative enactments relevant to this dispute, including the relevant versions of the
8 City’s Housing Element, Land Use Element, as well as various related resolutions and
9 ordinances passed by the City’s City Council and Planning Commission;

10 (2) Agenda packets containing documents considered by the City Council and Planning
11 Commission in passing the relevant legislative enactments;

12 (3) Approved minutes and videos of the relevant City Council and Planning Commission
13 meetings;

14 (4) Recent ballot measures in the cities of Yorba Linda and Cypress from the November
15 2024 general election regarding implementation of those cities’ housing elements; and

16 (5) California Superior Court order in *Building Industry Association of San Diego County*
17 *v. City of Encinitas*, Case No. 37-2017-00023267-CU-WM-NC.

18 Each of these categories of documents is subject to judicial notice. Evidence Code 452,
19 subdivision (b) explicitly provides for judicial notice of legislative enactments of public entities
20 like the City, which includes the City Charter, the City’s Housing Element, and various related
21 resolutions and ordinances. Most of the documents subject to this Request for Judicial Notice,
22 including the legislative history agenda packets, were sourced from the City’s official online
23 repository for public records,¹ and so the existence and contents of these documents “are not
24 reasonably subject to dispute and are capable of immediate and accurate determination by resort

25 _____
26 ¹ (Public Records, City of Newport Beach, <https://www.newportbeachca.gov/government/data-hub/public-records> [providing functionality to “[s]earch public records” with links to online
27 repository]; Agendas & Minutes, City of Newport Beach, <https://www.newportbeachca.gov/government/data-hub/agendas-minutes> [“Access complete City
28 Council meeting documents, resolutions and ordinances using the City's specialized application, Laserfiche.”]; Laserfiche, City of Newport Beach, [https://www.newportbeachca.gov/government/data-hub/public-records/laserfiche.](https://www.newportbeachca.gov/government/data-hub/public-records/laserfiche))

1 to sources of reasonably indisputable accuracy.” (Evid. Code § 452, subd. (h).) The court should
2 thus take judicial notice of the existence, content, and authenticity of these documents. (*Glaski v.*
3 *Bank of America* (2013) 218 Cal.App.4th 1079, 1090 [“Courts can take judicial notice of the
4 existence, content and authenticity of public records and other specified documents, but do not
5 take judicial notice of the truth of the factual matters asserted in those documents.”].)

6 **II. ARGUMENT**

7 NBSA seeks judicial notice of (1) legislative enactments; (2) agenda packets related to
8 those legislative enactments; (3) approved minutes and videos of relevant City Council and
9 Planning Commission meetings; (4) ballot measures from the cities of Yorba Linda and Cypress;
10 and (5) a California Superior Court order. All of these documents are properly the subject of
11 judicial notice.

12 **A. The Court should take judicial notice of legislative enactments.**

13 MI Exs. 15, 21, 23, 38, 48, 42, 49, 50, 51, 52, 59, 60, 70, 71 are legislative enactments
14 that are subject to judicial notice under Evidence Code § 452, subdivision (b). Courts may take
15 judicial notice of regulations and legislative enactments issued by or under the authority of any
16 public entity in the United States. (Evid. Code § 452, subd. (b).) “Public entit[ies]” include
17 political subdivisions such as cities and counties. (Evid. Code § 200.) The existence and contents
18 of legislative enactments are also “not reasonably subject to dispute and are capable of immediate
19 and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code
20 § 452, subd. (h).) Courts have thus taken judicial notice of city and county ordinances, codes, and
21 similar legislative enactments. (*See e.g., Tower Lane Properties v. City of Los Angeles* (2014) 224
22 Cal.App.4th 262, 272 fn.6 [“We may take judicial notice of local ordinances and other official
23 resolutions, reports, and acts of a city.”].) This includes a city charter (*LaGrone v. City of*
24 *Oakland* (2011) 202 Cal.App.4th 932, 941 fn.3), as well as “official resolutions, reports, and other
25 official acts of a city.” (*Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014,
26 1027; *see also Dailey v. City of San Diego* (2013) 223 Cal.App.4th 237, 244 fn.1 [taking judicial
27 notice of city council resolutions and city ordinances]; *Evans v. City of Berkeley* (2006) 38
28 Cal.4th 1, 7 fn.2 [judicial notice of city council resolution].) The various elements of a general

1 plan, such as the Housing Element, are also the proper subject of judicial notice. (*Coalition*
2 *Advocating Legal Housing Options v. City of Santa Monica* (2001) 88 Cal.App.4th 451, 462 fn.7;
3 *United Neighborhoods for Los Angeles v. City of Los Angeles* (2023) 93 Cal.App.5th 1074, 1082
4 fn.4.)

5 Here, NBSA seeks judicial notice of MI Exs. 15, 21, 23, 38, 48, 42, 49, 50, 51, 52, 59, 60,
6 70, 71 each of which is a legislative enactment relevant to the dispute between parties.
7 Specifically, Section 423 of the City Charter (MI Ex. 71) can be judicially noticed and is relevant
8 because it is the basis for NBSA’s Petition. NBSA’s Petition for Writ of Mandate seeks a writ
9 overturning City Council Resolution Nos. 2024-51 (MI Ex. 49), 2024-58 (MI Ex. 38), and 2024-
10 73 (MI Ex. 70). And City Council Resolution Nos. 2022-60 (MI Ex. 15), 2024-32 (MI Ex. 23),
11 2024-50 (MI Ex. 42), and 2024-52 (MI Ex. 50) provide context surrounding the adoption of the
12 Housing Element in 2022 and later steps in its implementation. The Housing Element as it was
13 originally adopted in September 2022 (MI Ex. 15, Exhibit A) and as it was amended earlier this
14 year (MI Ex. 60), and the amended Land Use Element adopted without Section 423 voter
15 approval (MI Ex. 48) are central documents to this dispute. These legislative enactments are each
16 properly subject to judicial notice. (See, e.g., *Coalition Advocating Legal Housing Options v. City*
17 *of Santa Monica, supra*, 88 Cal.App.4th at 462 fn.7)

18 **B. The Court should take judicial notice of materials from City Council meeting**
19 **and Planning Commission meeting agenda packets.**

20 The resolutions, ordinances, and Housing Elements noted above were the product of
21 numerous City Council and Planning Commission meetings. NBSA seeks judicial notice of the
22 documents considered at those meetings, namely, relevant portions of “Agenda Packets” for each
23 meeting relevant to the above legislative enactments. The meetings at issue are the following:

- 24 • September 13, 2022 City Council Meeting: The City Council adopted the Housing
25 Element containing a plan to obtain voter approval pursuant to Section 423 of the City
26 Charter through Resolution No. 2022-60.
- 27 • April 18, 2024 Planning Commission Meeting: The Planning Commission considered
28 staff reports and issued recommendations to the City Council regarding amendments to

1 the plan to implement the Housing Element to remove the Section 423 vote.

- 2 • July 9, 2024 City Council Meeting: The City Council considered in a study session the
3 issues related to amending the Land Use Element and Housing Element without a Section
4 423 vote.
- 5 • July 23, 2024 City Council Meeting: After considering City staff reports and
6 presentations, the City Council passed resolutions that initiated the process to amend the
7 Housing Element to remove the Section 423 vote (Resolution No. 2024-58) and to modify
8 the Land Use Element to implement the Housing Element without a Section 423 vote
9 (Resolution No. 2024-51).
- 10 • September 5, 2024: The Planning Commission made recommendations to the City
11 Council to implement the Housing Element through amendments to the general plan
12 without a Section 423 vote.
- 13 • September 24, 2024: The City Council adopted the amended Housing Element
14 (Resolution No. 2024-73) that removed the Section 423 right to vote and passed
15 ordinances modifying the municipal code to implement the Housing Element (Ordinance
16 Nos. 2024-16, 2024-17).

17 These documents are relevant because they provide the background, bases, and rationale
18 for the City’s decision to eliminate the Section 423 vote on the Land Use Element amendments
19 that implement the City’s Housing Element. The existence, content, and authenticity of these
20 documents are subject to judicial notice for two reasons.

21 First, the agenda packets are relevant legislative history of the legislative enactments
22 concerning the City’s elimination of the Section 423 vote. These agenda packets include staff
23 reports and presentations prepared to inform the City Council and Planning Commission
24 regarding issues related to the proposed legislation (see, e.g., MI Ex. 2), ordinances and other
25 legislative enactments (see, e.g., MI Ex. 21), letters from citizens concerning the proposed
26 legislative acts (see, e.g., MI Ex. 6), letters from state regulators (MI Ex. 16), agendas for the
27 meetings (MI Ex. 7, 18, 24, 34, 55, 62), and other documents that the City Council and Planning
28 Commission considered in conjunction with the relevant legislative enactments discussed above.

1 Legislative history concerning these provisions is the proper subject of judicial notice. (*Evans v.*
2 *City of Berkeley, supra*, 38 Cal.4th at 7, 9 fns. 2, 5 [holding that “city manager’s memorandum to
3 the mayor and city council recommending the resolution’s adoption” was properly subject to
4 judicial notice as legislative history]; *People v. Krohn* (2007) 149 Cal.App.4th 1294, 1298 fn.3
5 [judicial notice of legislative history of City ordinance].)

6 Second, the existence, contents, and authenticity of the agenda packets “are not reasonably
7 subject to dispute and are capable of immediate and accurate determination by resort to sources of
8 reasonably indisputable accuracy.” (Evid. Code § 452, subd. (h).) It is proper to take judicial
9 notice of the “existence, content and authenticity of public records” (*Glaski v. Bank of America,*
10 *supra*, 218 Cal.App.4th at 1090), including “records and proceedings” before a public
11 governmental entity (*Agostini v. Strycula* (1965) 231 Cal.App.2d 804, 806; *see also, e.g., Trancas*
12 *Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 178 fn.3 [“The city has
13 requested that we take judicial notice of this [city council] agenda. We do so, but only as proof of
14 its contents.”]). Moreover, as stated in the concurrently filed Declaration of Bailey W. Heaps,
15 each of the agenda packet documents was downloaded from <https://ecms.newportbeachca.gov>,
16 which is the City’s online repository of public records.² Reliance on that online repository is
17 appropriate for purposes of judicial notice. (*Moehring v. Thomas* (2005) 126 Cal.App.4th 1515,
18 1524 fn.5 [“[P]laintiffs ask us to take judicial notice of other information found on the [U.S.
19 Forest Service] Web site. The parties’ requests for judicial notice are granted”]; *Shaw v. People*
20 *ex rel. Chiang* (2009) 175 Cal.App.4th 577, 606 fn.10 [judicial notice of “official acts and public
21 records” on government website appropriate].) Although the parties may dispute certain factual
22 assertions in these agenda packets, their existence, contents, and authenticity, and the fact that
23 they were considered by the City Council and Planning Commission at the relevant meetings, are
24 not subject to dispute, and thus the documents are the proper subject of judicial notice.

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26 ² (Public Records, City of Newport Beach, <https://www.newportbeachca.gov/government/data-hub/public-records> [providing functionality to “[s]earch public records” with links to online
27 repository]; Agendas & Minutes, City of Newport Beach,
28 <https://www.newportbeachca.gov/government/data-hub/agendas-minutes> [“Access complete City
Council meeting documents, resolutions and ordinances using the City's specialized application,
Laserfiche.”]; Laserfiche, City of Newport Beach,
<https://www.newportbeachca.gov/government/data-hub/public-records/laserfiche>.)

1 **C. Approved minutes and videos of City Council and Planning Commission**
2 **meetings.**

3 In addition to the materials from agenda packets for relevant City Council and Planning
4 Commission meetings discussed above, NBSA seeks judicial notice of the official minutes and
5 video recordings of the above meetings where the City Council or the Planning Commission
6 discussed the relevant legislative enactments. Specifically, this section concerns the minutes and
7 video recordings of the City Council meetings on September 13, 2022 (MI Exs. 8, 12, 14), July 9,
8 2024 (MI Exs. 25, 29), July 23, 2024 (MI Exs. 35, 36, 47), and September 24, 2024 (MI Exs. 63,
9 69) and the Planning Commission meetings on April 18, 2024 (MI Exs. 19, 20) and September 5,
10 2024 (MI Exs. 56, 58). As with the materials from agenda packets, the meeting minutes and video
11 recordings are subject to judicial notice because they constitute the legislative history of the
12 legislative enactments discussed above. (See, e.g., *People v. Krohn, supra*, 149 Cal.App.4th at
13 1298 fn.3 [allowing judicial notice of legislative history of ordinance].) Further, the existence,
14 contents, and authenticity of the meeting minutes and videos of the meetings “are not reasonably
15 subject to dispute and are capable of immediate and accurate determination by resort to sources of
16 reasonably indisputable accuracy.” (Evid. Code § 452, subd. (h).) The Court of Appeal has held
17 that “official minutes” of local government meetings are “clearly a matter of which [a court] can
18 take judicial notice.” (*Social Services Union v. City and County of San Francisco* (1991) 234
19 Cal.App.3d 1093, 1098 fn.3.) The same is true of videos of such meetings. (*Coastal Protection*
20 *Alliance Inc. v. Airbnb, Inc.* (2023) 95 Cal.App.5th 207, 220 fn.8 [taking judicial notice of
21 “videorecordings” of Coastal Commission meetings under Evidence Code § 452, subdivisions (c)
22 and (h)]; cf. *Agostini v. Strycula, supra*, 231 Cal.App.2d at 806 [local government “records and
23 proceedings” subject to judicial notice].) Each of the meeting minutes and videos was
24 downloaded from the City’s online public record repository, discussed above, which is available
25 at <https://ecms.newportbeachca.gov>.³ The videos’ existence, content, and authenticity is thus not

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27 ³ (Agendas & Minutes, City of Newport Beach,
28 <https://www.newportbeachca.gov/government/data-hub/agendas-minutes>.) Note that the videos
are hosted on the website <https://newportbeach.granicus.com>, but the City makes the links to that
website available through the same <https://ecms.newportbeachca.gov> repository.

1 subject to reasonable dispute. The Court should thus take judicial notice of these videos.

2 **D. Recent ballot measures related to Housing Elements are properly the subject**
3 **of judicial notice.**

4 NBSA seeks judicial notice of ballot measures from the cities of Yorba Linda and Cypress
5 that were voted on in the recent November 5, 2024 general election, and the fact that voters
6 approved them (as shown in the Orange County Registrar of Voters’ “Unofficial Election
7 Results” for the November 5, 2024 general election, MI Ex. 74). Measure JJ asked residents of
8 Yorba Linda to vote on a change to the city’s land use laws as part of the “implementation
9 programs of the city of Yorba Linda 2021-2029 Housing Element” and as required by the “Yorba
10 Linda Right-to-Vote Amendment.” MI Ex. 72 at 2. Measure S asked residents of Cypress to vote
11 on one proposed way of implementing its “2021-2029 Housing Element.” MI Ex. 73 at 2. NBSA
12 relies on these measures to show that numerous jurisdictions have put the implementation of their
13 Housing Element to a vote of residents, and that such votes were not “precluded” by state law.

14 Because the ballot measures were approved by voters, they are “legislative enactments”
15 that are subject to judicial notice. (Evid. Code § 452, subd. (b).) The Exhibits at issue here, which
16 are the official ballot pamphlets, are further subject to judicial notice because such ballot
17 pamphlets are “official government document[s]” pursuant to Evidence Code 452, subdivision
18 (c). (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 22 fn.10 [taking judicial notice of pamphlet
19 for local ballot measure].) Moreover, the existence and content of these ballot measures, and the
20 election results, are “[f]acts and propositions that are not reasonably subject to dispute and are
21 capable of immediate and accurate determination by resort to sources of reasonably indisputable
22 accuracy.” (Evid. Code, § 452, subd. (h).) The Court of Appeal has held that “ballot measure[s]”
23 and “election results” can be judicially noticed. (*Yumori-Kaku v. City of Santa Clara* (2020) 59
24 Cal.App.5th 385, 430 fn.12 [taking judicial notice of a “ballot measure, [and] the election results
25 on the ballot measure produced by the county registrar.”].) Finally, these documents are public
26 records available on the Orange County Registrar of Voters’ website at <http://www.ocvote.gov>
27 and thus their existence, authenticity, and content are appropriately subject to judicial notice. (See
28 *Shaw v. People ex rel. Chiang, supra*, 175 Cal.App.4th at 606 n.10 [judicial notice of “official

1 acts and public records” on government website appropriate].)

2 **E. The Court should take judicial notice of a Superior Court order in *Building***
3 ***Industry Association of San Diego County v. City of Encinitas.***

4 NBSA also seeks judicial notice of the Superior Court of San Diego County’s order in
5 *Building Industry Association of San Diego County v. City of Encinitas*, dated December 12, 2018
6 (MI Ex. 75). The Court should take judicial notice of Exhibit 75 pursuant to Evidence Code
7 Section 452(d), which provides that judicial notice may be taken of “[r]ecords of [] any court of
8 this state.” This includes orders in other actions. (*See, e.g., American Contractors Indemnity Co.*
9 *v. County of Orange* (2005) 103 Cal.App.4th 579, 581 fn.1 [taking judicial notice of trial court
10 order pursuant to Evid. Code § 452(d)].) Further, this order is relevant to the instant motion
11 because it involves a similar dispute—whether a city’s requirement that voters approve
12 significant increases in housing (as requirement by initiative) was preempted by state housing
13 laws. Accordingly, the Court should take judicial notice of Exhibit 75.

14 **III. CONCLUSION**

15 For the foregoing reasons, the Court should take judicial notice of Exhibits 1 through 75
16 attached to Movant’s Index of Exhibits.

18 Dated: December 4, 2024

KEKER, VAN NEST & PETERS LLP

19
20 By: /s/ Bailey W. Heaps

BAILEY W. HEAPS

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