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11	SUPERIOR COURT OF CALIFORNIA		
12	COUNTY OF ORANGE		
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14	STOP POLLUTING OUR NEWPORT, INC.,	Case No.	
15	d/b/a STILL PROTECTING OUR NEWPORT, a non-profit organization,	VERIFIED PETITION FOR WRIT OF	
16	Petitioner,	MANDATE	
17	V.		
18	CITY OF NEWPORT BEACH,	UNLIMITED JURISDICTION	
19	Respondent.		
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1. Petitioner Stop Polluting Our Newport, Inc., d/b/a Still Protecting Our Newport (SPON) brings this action for a writ of mandate against Respondent City of Newport Beach (City), and alleges as follows:

INTRODUCTION

- 2. More than two decades ago, local residents voted by a landslide in favor of the Greenlight Initiative, a ballot measure that added "Section 423" to the City Charter. Section 423 prohibits the City Council from amending the City's General Plan to authorize major development projects without first obtaining approval from local residents. More specifically, Section 423 mandates local residents approve *any* amendment to the City's General Plan that authorizes the development of more than 100 dwelling units.
- 3. The City Council openly violated Section 423. On July 23, 2024, the City Council purported to adopt an amendment to the City's General Plan that would allow for the development of at least 8,100 new dwelling units, and as many as 19,000 new dwelling units. Local residents did not vote on that amendment prior to the July 23 action of the City Council.
- 4. The City Council asserts, without support, that the right to vote by local residents under Section 423 is preempted by housing mandates adopted by the state Legislature. That is not the law and the City knows it.
- 5. For example, in September 2022, the City informed the California Department of Housing and Community Development (HCD) that major amendments to the City's General Plan authorizing the development of more than 100 dwelling units are subject to a local vote. Further, the City expressly told HCD that it planned to comply with Section 423 as part of the overall process to meet state housing mandates. A month later, HCD issued a written letter approving the City's plan to comply with Section 423. What's more, City officials, such as the Mayor, told local residents that any General Plan amendment that triggered Section 423 would be submitted to a vote of local residents. The City Council's sudden reversal is stunning in light of the existing public record.
 - 6. A writ of mandate should issue directing the City Council to comply with Section 423.

JURISDICTION AND VENUE

- 7. This Court has jurisdiction under laws that include Code of Civil Procedure § 1085, and Article 6, § 10 of the California Constitution.
- 8. Venue is proper in this Court under California Code of Civil Procedure § 394 because the City is situated in Orange County.
- 9. SPON has exhausted any administrative remedies and has no plain, adequate, or speedy remedy at law.

PARTIES

- 10. Founded in 1974, Petitioner SPON is a non-profit organization that represents the interests of City residents in connection with environmental matters and related land use issues. SPON has a beneficial interest in the subject matter of this litigation within the meaning of section 1086 of the California Code of Civil Procedure.
- 11. Respondent City is a chartered city under the California Constitution, and operates through a City Charter per Government Code § 34450, et seq. The City is governed by a seven-member City Council, and has adopted a General Plan controlling all residential and commercial development in the City.

THE CONTROVERSY

- A. Local Residents Pass Measure S, Adding Section 423 to the City's Charter.
- 12. City Charter Section 423—commonly known as the "Greenlight Initiative"—is a fundamental section of the City's Charter that requires voter approval of land use decisions that significantly increase the amount or intensity of development in the City.
- 13. Presented to voters as Measure S, the principal object of the Greenlight Initiative was to amend the City Charter to add Section 423. In November 2000, local residents voted nearly 2-to-1 to approve Measure S.
 - 14. The current version of Section 423 states, in full:
 - Voter approval is required for any major amendment to the Newport Beach General Plan. A "major amendment" is one that significantly increases the maximum amount of traffic that allowed uses could generate, or significantly increases allowed density or intensity. "Significantly increases" means over 100 peak hour trips (traffic), or over 100 dwelling units (density), or over 40,000 square feet of floor area (intensity); these

thresholds shall apply to the total of: 1) Increases resulting from the amendment itself, plus 2) Eighty percent of the increases resulting from other amendments affecting the same neighborhood and adopted within the preceding ten years. "Other amendments" does not include those approved by the voters. "Neighborhood" shall mean a Statistical Area as shown in the Land Use Element of the General Plan, page 89, in effect from 1988 to 1998, and new Statistical Areas created from time to time for land subsequently annexed to the City.

"Voter approval is required" means that the amendment shall not take effect unless it has been submitted to the voters and approved by a majority of those voting on it. Any such amendment shall be submitted to a public vote as a separate and distinct ballot measure notwithstanding its approval by the city council at the same time as one or more other amendments to the City's General Plan. The city council shall set any election required by this Section for the municipal election next following city council approval of the amendment, or, by mutual agreement with the applicant for the amendment, may call a special election for this purpose with the cost of the special election shared by the applicant and the City as they may agree. In any election required by this Section, the ballot measure shall be worded such that a YES vote approves the amendment and a NO vote rejects the amendment; any such election in which the ballot measure is not so worded shall be void and shall have no effect.

This section shall not apply if state or federal law precludes a vote of the voters on the amendment. (Added effective December 15, 2000)

B. City Officials Spent Years Telling the State and Local Residents that the CityWould Comply with Section 423.

- 15. The California Legislature requires each city in California to adopt a comprehensive, long-term general plan for the physical development, configuration, and character of the city. (Gov. Code § 65300, et seq.) A city's general plan serves a vital purpose in local planning efforts, with California courts having described the general plan as "a constitution for all further development within the city." (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 997; see also *Endangered Habitats League, Inc. v. Cnty of Orange* (2005) 131 Cal.App.4th 777, 181 ["The general plan functions as a 'constitution for all future developments,' and land use decisions must be consistent with the general plan and its elements."].)
- 16. On September 13, 2022, the City adopted the Housing Element, which is a comprehensive disclosure of the details of the City's plan to comply with the HCD's Regional Housing Needs Allocation. According to the City's Housing Element: for the "2021-2029 planning period the City was allocated a total of 4,845 units[.]" (Housing Element at 1-4.)

17.

HCD for review and certification. In its Housing Element, the City made numerous statements recognizing that a Section 423 vote was required to amend other portions of the General Plan to align with the Housing Element. For example, the City unambiguously stated it "will implement Charter Section 423 when it amends" the General Plan.

18. The HCD conducted a review of the proposed Housing Element. In an October 5,

Two days later, on September 15, 2022, the City submitted the Housing Element to the

- 18. The HCD conducted a review of the proposed Housing Element. In an October 5, 2022, letter, HCD certified that the City's Housing Element was "in full compliance with State Housing Element Law." In that same letter, HCD also informed the City that it "must continue timely and effective implementation of all programs including . . . [i]nitiating a Ballot Measure for a Charter Section 423 Vote."
- 19. Since publishing the Housing Element, the City has made numerous other statements recognizing its obligations to submit the necessary General Plan amendments to a vote under Section 423.
- 20. For example, on April 18, 2024, the City's Planning Commission held a meeting to provide a recommendation to the City Council regarding various amendments and actions to implement the Housing Element, including an amendment to the General Plan Land Use Element. The Staff Report published in advance of that meeting provided the following: the "proposed General Plan Land Use Element amendments would not take effect unless it has been submitted to the voters and approved by a majority of those voting on it."
- 21. More recently, in the June 2024 issue of *Newport Beach Living*, the City's Mayor and Councilmember, Will O'Neill, confirmed that a Section 423 public vote would take place on the proposed General Plan amendment: "[i]n November [2024], our residents will have the choice to approve that approach when the land use element of our city's general plan (implementing the housing element) is in front of them."
- 22. Despite these numerous promises and representations to local residents, the City Council abruptly reversed course and declined to submit the proposed amendments to the City's General Plan to the local residents for a vote, as required by Section 423.

C. The July 23, 2024, City Council Meeting.

- 23. The City Council held a public meeting on July 23, 2024. Agenda Item No. 23 for the meeting presented the City Council with two options. The first option was to comply with Section 423, and submit the proposed General Plan amendments to the local residents for a vote. The second option was for the City Council to unilaterally approve the proposed General Plan amendments without calling a local vote as required by Section 423.
- 24. The City Council adopted the second option. Resolution No. 2024-58 provides in relevant part, that the City Council "does hereby initiate a narrowly focused amendment to the adopted and certified statutorily compliant 6th Cycle Housing Element of the General Plan to remove the reference to a vote of the electorate pursuant to Charter Section 423 as a constraint or as an implementing action." Resolution No. 2024-51 purported to approve amendments to the Land Use Element of the City's General Plan, in particular by authorizing the development of thousands of housing units without submitting the amendment for a local vote. In effect, the City Council ignored Section 423's voter approval requirement.
- 25. A week later, on July 30, the City published for public comment its proposed amended Housing Element, in which the City removed the previous statements that Section 423 required the City to hold a public vote. The proposed amended Housing Element now provides that a "Charter Section 423 vote is precluded, and the City will move forward with implementing the Housing Element without a Charter Section 423 vote."
- 26. Mayor O'Neill later confirmed that, despite the City Council's decision, Section 423 required the Housing Element be submitted to a vote of local residents. Specifically, he stated: "I thought that the policies, principles and politics all leaned toward not sending to a vote. But I read 423 to require a vote. So I couldn't support motions that interpreted 423 opposite that." Yet rather than enter a vote at the Council Meeting that was consistent with the law, his stated views, and his assurances to local residents that a Section 423 election would be held, Mayor O'Neill abstained. Mayor O'Neill attempted to justify his conduct as a matter of "professional courtesy" and asserted that it "made sense" in light of claimed threats of litigation.

27. The City has failed to provide any legal basis for its position that California law precludes a Section 423 vote. Nor can it. For example, California law is clear that "courts must resolve all doubts in favor of the people's exercise of the initiative power and uphold the validity of an initiative wherever it is possible to do so." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 539.) And "absent a clear showing of the Legislature's intent to the contrary," courts presume that initiatives requiring voter approval of local legislative decisions are valid. (*Voters for Responsible Retirement v. Bd. of Supervisors* (1994) 8 Cal.4th 765, 777.) No provision of state law allows the City's adoption of the General Plan amendment at issue in this litigation to be immunized from voter review and approval under Section 423.

28. Despite HCD's October 2022 letter directing "timely and effective" implementation of the Housing Element, the City Council waited nearly two years to take any action to amend the General Plan to be consistent with the HCD-certified Housing Element. The City's lack of diligence is no excuse for violating Section 423.

FIRST CAUSE OF ACTION

(Petition for Writ of Mandate)

- 29. Mandamus relief is available to compel a public agency to comply with a mandatory duty or remedy an abuse of discretion. (See Code Civ. Proc. §§ 1085, 1094.5.) A local government's "failure to follow its own procedures provides the basis for the issuance of a traditional writ of mandate." (CV Amalgamated LLC v. City of Chula Vista (2022) 82 Cal.App.5th 265, 283.)
- 30. Under City Charter Section 423, "[v]oter approval is required for any major amendment to the Newport Beach General Plan." A "major amendment" is one that "significantly increases" allowed density or intensity, which is defined to include adding more than 100 dwelling units (among other things). Section 423 also mandates that any such amendment "shall not take effect unless it has been submitted to the voters and approved by a majority of those voting on it."
- 31. The City, through its City Council, has refused to allow local residents to vote on an amendment to the City's General Plan that triggered Section 423. The amended General Plan Land Use Element at issue in this litigation states that it will add 4,845 new dwelling units. On information and belief, the Land Use Element will actually add more than 8,100 dwelling units, and as many as

1	19,000 dwelling units. By adding more than 100 dwelling units, Section 423 required that the Cir	
2	submit the proposed amendment to the General Plan Land Use Element to a vote of local residents	
3	On July 23, 2024, the City, through a vote of the City Council, violated Section 423 by voting to	
4	unilaterally approve the amendment to the General Plan Land Use Element.	
5	PRAYER FOR RELIEF	
6	WHEREFORE, SPON prays for judgment as follows:	
7	1. A writ of mandate directing the City Council to set aside Resolution No. 2024-58 and	
8	Resolution 2024-51.	
9	2. A declaration to the effect that the City Council cannot bypass the local vote	
10	requirement set forth in Section 423.	
11	3. An award of SPON'S reasonable fees and costs, including under Code of Civi	
12	Procedure section 1021.5.	
13	4. For any other relief as the Court deems proper and just.	
14	Respectfully submitted,	
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16	Dated: August 8, 2024 KELLER/ANDERLE LLP	
17		
18	By:	
19	Jennifer L. Keller Shaun A. Hoting	
20	Bejamin R. Barron Attorneys for Petitioner,	
21	Still Protecting Our Newport	
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VERIFICATION I, Charles Klobe, am the President of Stop Polluting Our Newport, Inc., d/b/a Still Protecting Our Newport. I have read this Verified Petition for Writ of Mandate, and am informed and believe that the matters therein are true, and on that ground alleges that the matters stated therein are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this day of August, 2024. Charles Klobe -9-