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7 *Attorneys for Petitioner,*
STOP POLLUTING OUR NEWPORT, INC.
8 D/B/A STILL PROTECTING OUR NEWPORT
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12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF ORANGE
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15 STOP POLLUTING OUR NEWPORT, INC.,
d/b/a STILL PROTECTING OUR NEWPORT, a
16 non-profit organization,

17 Petitioner,

18 v.

19 CITY OF NEWPORT BEACH,

20 Respondent.
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Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

UNLIMITED JURISDICTION

1 thresholds shall apply to the total of: 1) Increases resulting from the amendment itself,
2 plus 2) Eighty percent of the increases resulting from other amendments affecting the
3 same neighborhood and adopted within the preceding ten years. “Other amendments”
4 does not include those approved by the voters. “Neighborhood” shall mean a Statistical
5 Area as shown in the Land Use Element of the General Plan, page 89, in effect from
6 1988 to 1998, and new Statistical Areas created from time to time for land
7 subsequently annexed to the City.

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

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

22 **B. City Officials Spent Years Telling the State and Local Residents that the City
23 Would Comply with Section 423.**

24 15. The California Legislature requires each city in California to adopt a comprehensive,
25 long-term general plan for the physical development, configuration, and character of the city. (Gov.
26 Code § 65300, et seq.) A city’s general plan serves a vital purpose in local planning efforts, with
27 California courts having described the general plan as “a constitution for all further development
28 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.)

1 17. Two days later, on September 15, 2022, the City submitted the Housing Element to the
2 HCD for review and certification. In its Housing Element, the City made numerous statements
3 recognizing that a Section 423 vote was required to amend other portions of the General Plan to align
4 with the Housing Element. For example, the City unambiguously stated it “will implement Charter
5 Section 423 when it amends” the General Plan.

6 18. The HCD conducted a review of the proposed Housing Element. In an October 5,
7 2022, letter, HCD certified that the City’s Housing Element was “in full compliance with State
8 Housing Element Law.” In that same letter, HCD also informed the City that it “must continue timely
9 and effective implementation of all programs including . . . [i]nitiating a Ballot Measure for a Charter
10 Section 423 Vote.”

11 19. Since publishing the Housing Element, the City has made numerous other statements
12 recognizing its obligations to submit the necessary General Plan amendments to a vote under Section
13 423.

14 20. For example, on April 18, 2024, the City’s Planning Commission held a meeting to
15 provide a recommendation to the City Council regarding various amendments and actions to
16 implement the Housing Element, including an amendment to the General Plan Land Use Element.
17 The Staff Report published in advance of that meeting provided the following: the “proposed General
18 Plan Land Use Element amendments would not take effect unless it has been submitted to the voters
19 and approved by a majority of those voting on it.”

20 21. More recently, in the June 2024 issue of *Newport Beach Living*, the City’s Mayor and
21 Councilmember, Will O’Neill, confirmed that a Section 423 public vote would take place on the
22 proposed General Plan amendment: “[i]n November [2024], our residents will have the choice to
23 approve that approach when the land use element of our city’s general plan (implementing the housing
24 element) is in front of them.”

25 22. Despite these numerous promises and representations to local residents, the City
26 Council abruptly reversed course and declined to submit the proposed amendments to the City’s
27 General Plan to the local residents for a vote, as required by Section 423.

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

2 23. The City Council held a public meeting on July 23, 2024. Agenda Item No. 23 for the
3 meeting presented the City Council with two options. The first option was to comply with Section
4 423, and submit the proposed General Plan amendments to the local residents for a vote. The second
5 option was for the City Council to unilaterally approve the proposed General Plan amendments
6 without calling a local vote as required by Section 423.

7 24. The City Council adopted the second option. Resolution No. 2024-58 provides in
8 relevant part, that the City Council “does hereby initiate a narrowly focused amendment to the
9 adopted and certified statutorily compliant 6th Cycle Housing Element of the General Plan to remove
10 the reference to a vote of the electorate pursuant to Charter Section 423 as a constraint or as an
11 implementing action.” Resolution No. 2024-51 purported to approve amendments to the Land Use
12 Element of the City’s General Plan, in particular by authorizing the development of thousands of
13 housing units without submitting the amendment for a local vote. In effect, the City Council ignored
14 Section 423’s voter approval requirement.

15 25. A week later, on July 30, the City published for public comment its proposed amended
16 Housing Element, in which the City removed the previous statements that Section 423 required the
17 City to hold a public vote. The proposed amended Housing Element now provides that a “Charter
18 Section 423 vote is precluded, and the City will move forward with implementing the Housing
19 Element without a Charter Section 423 vote.”

20 26. Mayor O’Neill later confirmed that, despite the City Council’s decision, Section 423
21 required the Housing Element be submitted to a vote of local residents. Specifically, he stated: “I
22 thought that the policies, principles and politics all leaned toward not sending to a vote. But I read
23 423 to require a vote. So I couldn’t support motions that interpreted 423 opposite that.” Yet rather
24 than enter a vote at the Council Meeting that was consistent with the law, his stated views, and his
25 assurances to local residents that a Section 423 election would be held, Mayor O’Neill abstained.
26 Mayor O’Neill attempted to justify his conduct as a matter of “professional courtesy” and asserted
27 that it “made sense” in light of claimed threats of litigation.

1 19,000 dwelling units. By adding more than 100 dwelling units, Section 423 required that the City
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 voter
10 requirement set forth in Section 423.

11 3. An award of SPON'S reasonable fees and costs, including under Code of Civil
12 Procedure section 1021.5.

13 4. For any other relief as the Court deems proper and just.

14 Respectfully submitted,

15
16 Dated: August 8, 2024

KELLER/ANDERLE LLP

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18 By: _____

19 Jennifer L. Keller
20 Shaun A. Hoting
21 Benjamin R. Barron

22 *Attorneys for Petitioner,*
23 *Still Protecting Our Newport*
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1 **VERIFICATION**

2 I, Charles Klobe, am the President of Stop Polluting Our Newport, Inc., d/b/a Still Protecting
3 Our Newport. I have read this Verified Petition for Writ of Mandate, and am informed and believe
4 that the matters therein are true, and on that ground alleges that the matters stated therein are true.

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

7 Executed this __ day of August, 2024.

8 _____
9 Charles Klobe