

1 THE SUTTON LAW FIRM, PC
2 James R. Sutton, Esq. (State Bar No. 135930)
3 Bradley W. Hertz, Esq. (State Bar No. 138564)
4 Matthew C. Alvarez, Esq. (State Bar No. 301483)
5 150 Post Street, Suite 405
6 San Francisco, CA 94108
7 Telephone: (415) 732-7700
8 Facsimile: (415) 732-7701
9 E-mail: jsutton@campaignlawyers.com
10 E-mail: bhertz@campaignlawyers.com
11 E-mail: malvarez@campaignlawyers.com

12 [Co-Counsel listed on the following page]

13 Attorneys for Petitioners/Plaintiffs
14 TODD DAVID and SAN FRANCISCO
15 HOUSING ACTION COALITION

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN FRANCISCO**
19 **UNLIMITED JURISDICTION**

20 TODD DAVID and SAN FRANCISCO
21 HOUSING ACTION COALITION,

22 *Petitioners/Plaintiffs,*
23 vs.

24 JOHN ARNTZ, Director of the San Francisco
25 Department of Elections; CITY AND COUNTY
26 OF SAN FRANCISCO; and DOES 1-10,

27 *Respondents/Defendants.*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

08/08/2022
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

CPF-22-517840

Case No.

**VERIFIED PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

**CALENDAR PREFERENCE
REQUIRED BY STATUTE
(ELEC. CODE § 13314(a)(3))**

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2 A Limited Liability Partnership
3 Including Professional Corporations
4 WHITNEY A. HODGES, Cal. Bar No. 273080
5 ALLISON C. WONG, Cal. Bar No. 341178
6 501 West Broadway, 19th Floor
7 San Diego, California 92101-3598
8 Telephone: 619.338.6500
9 Facsimile: 619.234.3815
10 E mail: whodges@sheppardmullin.com
11 acwong@sheppardmullin.com
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **INTRODUCTION**

2 1. Petitioners/Plaintiffs TODD DAVID and SAN FRANCISCO HOUSING
3 ACTION COALITION (collectively, "Petitioners") bring this action to challenge the
4 legality of the "Affordable Housing Production Act" (the "Chan/Peskin Measure"), which,
5 after being spearheaded by San Francisco County Supervisors Connie Chan and Aaron
6 Peskin, was placed on the November 8, 2022 City and County of San Francisco (the "City"
7 or "San Francisco") ballot by the City and County of San Francisco Board of Supervisors
8 (the "Board").

9 2. The Chan/Peskin Measure, which Petitioners assert is legally invalid because
10 it violates mandatory provisions of the California Environmental Quality Act (Pub. Res.
11 Code §§ 21000 *et seq.*) ("CEQA") and Section 31.07 of City and County of San Francisco
12 Administrative Code ("Administrative Code"), was cynically designed to counter a ballot
13 measure which qualified for the November 8, 2022 San Francisco ballot via citizen
14 signatures (the "Affordable Homes Now Measure"). Both measures purport to increase
15 certain types of housing production within San Francisco, but the Affordable Homes Now
16 Measure is legal, whereas the Chan/Peskin Measure is illegal.

17 3. The City skipped indispensable procedures for placing the Chan/Peskin
18 Measure on the ballot because it could not follow the rules and place the Chan/Peskin
19 Measure on the ballot in time to compete with the Affordable Homes Now Measure on the
20 November 8, 2022 ballot. The City thereafter concocted ex post facto justifications for
21 failing to follow the procedures for placing a measure such as the Chan/Peskin Measure on
22 the ballot.¹ The Court must protect the voters from the City's cynicism and
23 underhandedness.

24 4. It is well established that pre-election review of ballot measures is appropriate
25 where the validity of a proposed measure is in serious doubt, and where the matter can be

26
27 ¹ Petitioner/Plaintiff SFHAC wrote a letter to the Board of Supervisors in anticipation of its
28 vote on the Chan/Peskin Measure, explaining the legal concerns in more detail. A true and
correct copy of the letter is attached hereto as Exhibit 1 and incorporated herein by this
reference.)

1 resolved before expenditures of time and effort are wasted on a futile election campaign.
2 (See City of San Diego v. Dunkl (2001) 86 Cal.App.4th 384, 389; Citizens for Responsible
3 Behavior v. Superior Court (1991) 1 Cal.App.4th 1013, 1022-23.) Where the issue of
4 whether a proposal is lawful has been placed before the court, the court has the power and
5 duty to order that the measure, if invalid, be stricken from the ballot. (Dunkl, 86 Cal.
6 App4th at 397.)

7 5. Additionally, the presence of an invalid measure on the ballot steals attention,
8 time, and money from the numerous valid propositions on the same ballot; it will confuse
9 some voters and frustrate others. (See American Federation of Labor v. Eu (1984) 36
10 Cal.3d 687, 697.) An ultimate decision that the matter is invalid, coming after the voters
11 have voted in favor of the measure, denigrates the legitimate use of the initiative procedure.
12 (Id.)

13 6. It is especially important to avoid voter confusion when an invalid ballot
14 measure (i.e., the Chan/Peskin Measure) is directly in conflict with a valid measure (i.e., the
15 Affordable Homes Now Measure), as is the case in the present action.

16 7. Petitioners have no plain, speedy and adequate remedy at law to challenge the
17 legality of the Chan/Peskin Measure, and therefore bring this Verified Petition for Writ of
18 Mandate and Complaint for Injunctive and Declaratory Relief (“Petition”).

19 PARTIES

20 8. Petitioner/Plaintiff TODD DAVID is a resident, duly registered voter, and
21 taxpayer in the City and County of San Francisco.

22 9. Petitioner/Plaintiff SAN FRANCISCO HOUSING ACTION COALITION
23 (“SFHAC”) is a nonprofit organization which educates the public on housing affordability
24 issues and advocates for the construction of more housing across all affordability levels in
25 order to alleviate the Bay Area’s and California’s housing shortage, displacement crisis,
26 and affordability crisis. SFHAC is also one of the chief supporters of the citizens’ initiative
27 Affordable Homes Now Measure, which will appear on the November 8, 2022 ballot.
28

1 16. On August 8, 2022, as required by Public Resources Code section 21167.5,
2 Petitioners notified Respondents that they intended to file suit to enforce the requirements
3 of CEQA and the City and County of San Francisco Administrative Code (“Administrative
4 Code”). A copy of that notice and proof of service are filed as Exhibit A with this Petition.

5 17. On August 8, 2022, as required by Public Resources Code section 21167.7
6 and Code of Civil Procedure section 388, Petitioners notified the Attorney General of the
7 State of California that they intended to file suit to enforce CEQA and the Administrative
8 Code. A copy of that notice and proof of service are filed as Exhibit B with this Petition.

9 **STATEMENT OF FACTS**

10 18. On July 13, 2022, the voter-sponsored Affordable Homes Now Measure
11 qualified for inclusion on the November 8, 2022 ballot after obtaining signatures from
12 roughly 80,000 voters in accordance with the Elections Code requirements. The Affordable
13 Homes Now Measure seeks to cut several years off the approval timeline for qualifying
14 housing projects that are 100% affordable, are for teachers or are mostly market-rate but
15 have 15% more below-market rate units than San Francisco would otherwise require under
16 affordability mandates. The Affordable Homes Now Measure would accelerate building by
17 streamlining San Francisco’s lengthy and often cumbersome approval process for projects
18 that already meet all existing local planning and building codes, including zoning
19 requirements. Substantially similar proposals had previously been struck down by the
20 Board.

21 19. Therefore, it was not surprising that on or about May 24, 2022, Supervisor
22 Connie Chan proposed the Chan/Peskin Measure as an amendment to the San Francisco
23 Charter, for inclusion on the ballot for the November 8, 2022 election in direct competition
24 with the Affordable Homes Now Measure.

25 20. On or about June 23, 2022, the City and County of San Francisco Planning
26 Department (“Planning Department”) determined that inclusion of the Chan/Perkins
27 Measure on the ballot did not constitute a “project” under the CEQA and the CEQA
28 Guidelines (14 C.C.R. §§ 15000 *et seq.*).

1 21. On or about July 14, 2022, San Francisco’s Environmental Review Officer
2 (“ERO”) determined that the Chan/Peskin Measure was “[n]ot defined as a project under
3 CEQA Guidelines Section 15378 and 15060(c)(2) because it would not result in a direct or
4 indirect change in the environment.” This determination was in error.

5 22. On or about July 19, 2022 and July 26, 2022, SFHAC submitted comment
6 letters in opposition to the Chan/Peskin Measure, alleging that the Board’s consideration of
7 the matter violated CEQA and the Administrative Code, specifically Section 31.07.

8 23. On or about July 26, 2022, the Board voted 7-4 to submit the Chan/Peskin
9 Measure to the Department of Elections for printing and inclusion on the ballot for the
10 November 8, 2022 election.

11 24. As of the date of this filing, neither San Francisco nor the Board have filed a
12 Notice of Exemption or Notice of Determination related to this action.

13 25. Currently, under the San Francisco Charter, the City and County of San
14 Francisco Planning Code (the “Planning Code”) and other municipal codes, housing
15 development projects require discretionary approval or approvals by various San Francisco
16 agencies including the Board, San Francisco Planning Commission (the “Planning
17 Commission”) and other boards, committees and commissions.

18 26. The Chan/Peskin Measure would amend the San Francisco Charter to create a
19 streamlined, ministerial approval for “Increased Affordability Housing Projects” in addition
20 to those currently permitted under Planning Code section 206.9 (“100% Affordable
21 Housing” and “Educator Housing” projects).

22 27. The Chan/Peskin Measure defines “Increased Affordability Housing
23 Projects” as market-rate multi-family housing developments of ten (10) or more units that
24 provide on-site inclusionary housing units, plus additional affordable units in an amount
25 equal to eight percent (8%) of the total number of units in the entire project.

26 28. Thus, the Chan/Peskin Measure would modify and expand the list of housing
27 projects eligible for ministerial review. Moreover, the additional project type would
28 provide for market-rate units and a density bonus outside of and additional to what is

1 authorized under the State Density Bonus Law (Govt. Code §§ 65915 *et seq.*). Petitioners
2 allege that neither of these components is authorized in the two project types previously
3 permitted by the Planning Code section 206.9 to forego discretionary review.

4 29. The Chan/Peskin Measure would also: (i) allow eligible projects to receive
5 certain modifications to the Planning Code; (ii) allow limited design review by the Planning
6 Department; and (iii) require ministerial approval within 180 days of submittal of a
7 complete development application. The Planning Commission will not be permitted to
8 accept or hear requests for discretionary review for eligible projects. Projects will be
9 reviewed through an administrative/ministerial process in a Planning Code section 344, as
10 amended by the ballot measure.

11 **APPLICABLE PROCEDURAL LAW**

12 30. California Elections Code section 13314 provides for the issuance of a writ of
13 mandate to prevent “an error or omission . . . in the . . . printing of, a ballot, county voter
14 information guide . . . or other official matter,” or that a neglect of duty as occurred or is
15 about to occur, so long as the issuance of the writ “will not substantially interfere with the
16 conduct of the election.” Section 13314(a)(3) provides that such a suit “shall have priority
17 over all other civil matters.”

18 31. Code of Civil Procedure sections 1085 *et seq.* provide that Petitioners may
19 seek a writ of mandate to prevent government officials – in this case Respondents Arntz
20 and San Francisco (collectively, “Respondents”) – from taking any official action to print
21 ballots and voting materials for an invalid ballot measure.

22 32. Code of Civil Procedure section 526 permits Petitioners to seek an injunction
23 restraining Respondents from taking any action to print ballots and voting materials for an
24 invalid ballot measure or spending any public funds on such measure.

25 33. Code of Civil Procedure section 1060 provides that in cases of actual
26 controversy relating to the legal rights and duties of the respective parties, any person may
27 bring an original action in the Superior Court for a declaration of his or her rights.

1 APPLICABLE SUBSTANTIVE LAW

2 34. CEQA Guidelines section 15060(c)(2) provides that CEQA does not
3 apply to an activity that is not a "project" as defined in Section 15378. CEQA Guidelines
4 section 15378 defines a project as:

5 ...the whole of an action, which has a potential for resulting in either a direct
6 physical change in the environment, or a reasonably foreseeable indirect
7 physical change in the environment, and that is any of the following:

8 (1) An activity directly undertaken by any public agency including but
9 not limited to public works construction and related activities clearing or
10 grading of land, improvement to existing public structures, enactment and
11 amendment of zoning ordinances, and the adoption and amendment of local
12 General Plans or elements thereof pursuant to Government Code Sections
13 65100-65700.

14 (2) An activity undertaken by a person which is supported in whole or
15 in part through public agency contacts, grants subsidies, or other forms of
16 assistance from one or more public agencies.

17 (3) An activity involving the issuance to a person of a lease, permit,
18 license, certificate, or other entitlement for use by one or more public
19 agencies.

20 35. A "project" has two essential elements. First, it is an activity directly
21 undertaken by a public agency, an activity supported in whole or in part by a public agency,
22 or an activity involving the issuance by a public agency of some form of entitlement,
23 permit, or other authorization. Second, a "project" is an activity that may cause a direct (or
24 reasonably foreseeable indirect) physical environmental change. (Pub. Res. Code § 21065;
25 CEQA Guidelines § 15378.)

26 36. Ministerial projects, or "non projects," do not require an agency to exercise
27 discretion in order to approve the project. CEQA Guidelines section 15369 explain that
28 agency actions determined "not to be a project" is:

29 a governmental decision involving little or no personal judgment by the public
30 official as to the wisdom or manner of carrying out the project. The public official
31 merely applies the law to the facts as presented but uses no special discretion or
32 judgment in reaching a decision...[it] involves only the use of fixed standards or
33 objective measurements, and the public official cannot use personal, subjective
34 judgment in deciding whether or how the project should be carried out.

35 (Emphasis added.)

36 37. An activity approved or carried out by a public agency is not exempt from

1 CEQA simply because it will not have an immediate or direct effect on the environment.
2 CEQA applies if the activity may cause “a reasonably foreseeable indirect physical change
3 in the environment.” (Muzzy Ranch Co. v. Solano County Airport Land Use
4 Comm’n (2007) 41 Cal.4th 372; Pub. Res. Code § 21065; CEQA Guidelines § 15378(a).)
5 The determination whether an activity may cause a foreseeable change in the environment
6 indirectly is made without considering whether such a change will actually occur.

7 38. A proposed activity is a project if it “is the sort that is capable of causing
8 direct or reasonably foreseeable indirect effects on the environment.” (Union of Med.
9 Marijuana Patients, Inc. v. City of San Diego (2019) 7 Cal.5th 1171, 1198.) The question is
10 not whether the activity will affect the environment, or what effects it might have, but
11 whether the activity has the potential to change the physical environment. Thus, under the
12 definition of a project in Public Resources Code section 21065 and CEQA Guidelines
13 section 15378(a), an activity that sets in motion a chain of events that could result in a
14 foreseeable indirect physical change in the environment qualifies as a project subject to
15 CEQA. (See Union of Med. Marijuana Patients, Inc., supra, 7 Cal.5th at 1199 [city
16 ordinance authorizing establishment of medical marijuana dispensaries and regulating their
17 location and operation could foreseeably result in construction of new stores and could alter
18 traffic patterns]; Muzzy Ranch Co., supra, 41 Cal.4th at 383 [development restrictions in
19 airport land use plan could result in changes to environment indirectly by causing
20 development to be displaced to other areas]; Plastic Pipe & Fittings Ass’n v. Cal. Bldg.
21 Standards Comm’n (2004) 124 Cal.App.4th 1390, 1412 [addition of PEX plastic pipe to
22 state building codes would allow use of PEX piping in construction which could
23 foreseeably have variety of adverse environmental impacts]; City of Livermore v.
24 LAFCO (1986) 184 Cal.App.3d 531 [revision of LAFCO sphere-of-influence guidelines to
25 change policies, such as those relating to where growth would occur and whether
26 agricultural land would be developed, may promote urbanization in unincorporated
27 areas]; Terminal Plaza Corp. v. City & County of San Francisco (1986) 177 Cal.App.3d
28 892 [residential hotel unit conversion and demolition ordinance could cause changes to

1 environment indirectly because it required either construction of replacement units or in-
2 lieu fee for new construction as condition of conversion permit].)

3 39. An agency’s determination that an approval process is a project as defined by
4 CEQA is not dispositive. Where the agency’s decision involves any exercise of judgment,
5 the action taken is a project for purposes of a CEQA and compliance with CEQA is
6 required unless the action qualifies for a codified exemption. (CEQA Guidelines
7 § 15002(i)(2).)

8 40. Here, the Chan/Peskin Measure, with its proposed change to the San
9 Francisco Charter to add an additional type of housing development that is exempt from
10 further discretionary review, is clearly – by its nature – a project.

11 41. The adoption of legislation proposed by the electorate through California’s
12 initiative process is not a “project” subject to CEQA, regardless of whether the measure is
13 placed on the ballot and approved by the voters or is adopted by the local agency decision-
14 making body as authorized by the initiative procedures set forth in the Elections Code.
15 (Tuolumne Jobs & Small Bus. Alliance v. Super. Court (2014) 59 Cal.4th 1029 [“Tuolumne
16 Jobs”] [agency action on voter-sponsored measure]; DeVita v. County of Napa (1995) 9
17 Cal.4th 763, 794 [adoption by electorate]; Stein v City of Santa Monica (1980) 110
18 Cal.App.3d 458 [adoption by electorate].)

19 42. The courts have set forth two distinct rationales for determining that the
20 adoption of a voter-sponsored measure is not a project subject to CEQA. First, courts have
21 determined that imposing CEQA on voter-sponsored initiative measure would be
22 inconsistent with Elections Code procedures that require the decision-making body to either
23 adopt the measure without change or submit the measure to the voters. (Tuolumne Jobs,
24 supra, 59 Cal.4th at 1036; Elec. Code § 9212.) The Elections Code created a ministerial duty
25 for an agency to either adopt a qualified voter-sponsored initiative or place it on the ballot.
26 Thus, the ministerial and limited nature of the agency’s decision exempts the action from
27 further CEQA review. (Native Am. Sacred Site & Env’tl Prot. Ass’n v. City of San Juan
28 Capistrano (2004) 120 Cal.App.4th 961.) Second, courts have long held that voters do not

1 act as agents of the public agency when adopting a voter-sponsored initiative. (DeVita,
2 supra, 9 Cal.4th at 794; Stein, supra, 110 Cal.App.3rd 458.)

3 43. In contrast to the rules governing voter-sponsored measures, a decision by a
4 public agency to submit an agency-sponsored measure to the voters is a discretionary
5 action, thus a project, and is not exempt from CEQA. (Friends of Sierra Madre v. City of
6 Sierra Madre (2001) 25 Cal.4th 165, 187.) In articulating the difference between voter- and
7 agency-sponsored ballot measures, the California Supreme Court held:

8 Voters who are advised that an initiative has been placed on the ballot by city
9 council will assume that the city council has done so only after itself making a
10 study and thoroughly considering the potential environmental impact of the
11 measure. For that reason a prelection [Environmental Impact Report] should
12 be prepared and considered by the city council before the council decided to
13 place a council-generated initiative on the ballot. By contrast, voters have no
14 reason to assume that the impact of a voter-sponsored initiative has been
15 subjected to the same scrutiny and, therefore, will consider the potential
16 environmental impacts more carefully in deciding whether to support or
17 oppose the initiative.

18 (Id. at 191.)

19 44. Similarly, a public agency proposal that requires voter approval after the
20 initial decision and approval by the public agency is a project subject to CEQA (Fullerton
21 Joint Union High Sch. Dist. v. State Bd. of Educ. (1982) 32 Cal.3d 779, 796; People ex rel
22 Younger v. LAFCO (1978) 81 Cal.App.3d 464, 479; Citizens for Responsible Gov't v. City
23 of Albany (1997) 56 Cal.App.4th 1199.)

24 45. The Chan/Peskin Measure is not a voter-sponsored ballot initiative. Instead,
25 it is a Board-sponsored proposal, and therefore is not subject to the same CEQA exemption
26 enjoyed by those measures placed on the ballot via the voter initiative process.

27 46. Here, the Chan/Peskin Measure is directly analogous to the agency action the
28 California Supreme Court struck down in Union of Med. Marijuana Patients, Inc., supra. In
that case, the Court determined that introduction of a new use “could cause a citywide
change in patterns of vehicle traffic...The necessary causal connection between the
Ordinance and the effects is present because the adoption of the Ordinance was an
‘essential step culminating in action [authorization of new use] which may affect the

1 environment.” (7 Cal.5th at 1199.)

2 47. Like the new use in Union of Med. Marijuana Patients, Inc., the Chan/Peskin
3 Measure authorizes the inclusion of an additional type of development authorized to bypass
4 environmental compliance and discretionary review. The additional type is a wholly
5 different development model than what is currently permitted and includes a density
6 component that will – by its very nature – result in housing in excess of what is currently
7 permitted under the applicable zoning and state law.

8 48. Additionally, the Chan/Peskin Measure will remove barriers to demolition
9 and adverse alternation of historic resources. Given this and the fact this intensity in
10 residential use has not otherwise been analyzed or mitigated for previously, it is reasonably
11 foreseeable that such inclusion, which will allow for an eight percent (8%) increase in
12 density in addition to what is permitted by the State Density Bonus Law, could result in
13 direct and cumulative environmental impacts related to traffic, noise/vibration, land use
14 plan consistency, noise and vibration, archeological resources, air quality and historic
15 resources.

16 49. In Union of Med. Marijuana Patients, Inc., supra, the City of San Diego at
17 least had the benefit of arguing that the new use authorized under its decision would be
18 subject to subsequent CEQA review on a project-by-project basis. Here, San Francisco
19 does not even have this luxury as the Chan/Peskin Measure specifically authorizes
20 ministerial review of any housing development that qualifies under the proposed new use.

21 50. Section 31.07 of the Administrative Code states:

22 The Environmental Review Officer shall maintain a listing of types of
23 nonphysical and ministerial projects excluded from CEQA. Such listing
24 shall be modified over time as the status of types of projects may
25 change under applicable laws, ordinances, rules and regulations. The
26 listing shall not be considered totally inclusive, and may at times
27 require refinement or interpretation on a case-by-case basis. When the
28 Environmental Review Officer proposes to modify such listing, notice
shall be provided on the Planning Commission agenda prior to such
modification. Any person who may consider any modification to be
incorrect may appeal such modification to the Planning Commission
within twenty (20) days of the date of the Planning Commission agenda

1 on which notice of such modification was posted. The Planning
2 Commission may affirm, modify or disapprove such modification, and
3 the decision of the Planning Commission shall be final.

4 (Emphasis added.)

5 51. By the very language of the Administrative Code, the ERO is required to
6 maintain a list of approved ministerial or non-physical projects exempt from further CEQA
7 review. If that list is to be modified for any reason, notice must be provided on the
8 Planning Commission agenda. A party may then appeal the modification, triggering
9 Planning Commission review.

10 52. Contrary to these requirements, the Chan/Peskin Measure, which very clearly
11 would result in the modification of San Francisco's list of ministerial projects, was never
12 included on a Planning Commission agenda, nor does it fit within any existing category of
13 approved ministerial projects or non-physical projects exempt from environmental review.

14 53. Should the Chan/Peskin Measure be included on the November 8, 2022 ballot
15 and subsequently approved by the voters, there is no mechanism that would authorize this
16 modification to be noticed on a Planning Commission agenda and the ability to further
17 appeal this action would be eliminated.

18 54. Therefore, in order to comply with Administrative Code section 31.07, the
19 ERO was required to notice the Chan/Peskin Measure on a Planning Commission agenda
20 prior to a determination by the Board whether to submit it to the Department of Elections
21 effectively deprived Petitioners of their procedural due process rights, codified in the
22 Administrative Code.

23 55. Had the Planning Commission heard from a large number of opponents of the
24 Chan/Peskin Measure during the requisite appeal period, it likely would have required
25 CEQA compliance prior to sending the matter on to the Board. Failure to comply with these
26 procedural requirements will substantially and detrimentally impact Petitioners.

27 56. As such, by conducting the Board's hearing on the matter prior to compliance
28 with the Administrative Code, Respondents failed to proceed in a manner prescribed by

1 Administrative Code section 31.07. This constitutes an abuse of discretion.

2 57. Assuming arguendo that Administrative Code section 31.07 did not require
3 notice and appeal for project listings initiated by the Board of Supervisors, the ERO's
4 actions here nonetheless constitute an abuse of discretion in violation of Section 31.07 as
5 they impermissibly added a broad new category of ministerial projects without requisite
6 notice to the Planning Commission and the public, again effectively depriving Petitioners
7 of their procedural due process rights, codified in the Administrative Code.

8 58. Specifically, the ERO made a *de facto* alteration of the list to include
9 discretionary actions by the Board that: (a) alter and/or eliminate subjective Planning Code
10 standards that protect broad categories of historic resources, including listed historic
11 buildings in the Planning Code; (b) eliminate current subjective standards that exist to
12 prevent environmental impacts; and (c) create a new category of market-rate housing with
13 increased affordability that are excluded from environmental protections.

14 59. The ERO's assertion that the issue is moot, because the Chan/Peskin Measure
15 could have been processed as an addendum to the 2004 and 2009 Housing Element Final
16 Environmental Impact Report ("FEIR") underscores the ERO's deviation from its practices
17 in approving seven (7) other housing streamlining programs. In each case, the ERO
18 recognized the potential for indirect physical impacts but determined those impacts were
19 disclosed in the FEIR, in large part due to substantive environmental protections in the
20 Planning Code that would be eliminated by the Chan/Peskin Measure.

21 60. Erroneously shoehorning the Chan/Peskin Measure into an existing category
22 of approved ministerial projects or non-physical projects that are not subject to CEQA is an
23 abuse of discretion. It deprives Petitioners of their due process rights to notice and appeal,
24 and sets a precedent for future end-runs around CEQA so the Board can place competing
25 measures on the ballot in violation of its own Administrative Code and the California
26 Supreme Court's holding in Friends of Sierra Madre, supra, 25 Cal.4th at 187.

1 of the law to the facts, or a determination as to whether the Board had complied with
2 applicable legal requirements in a manner that renders the approval a non-project.

3 68. Given the Chan/Peskin Measure's inclusion of, essentially, a new use to the
4 San Francisco Charter, it reasonably foreseeable that Board's action could result in direct
5 and cumulative environmental impacts.

6 69. Because approval of the Chan/Peskin Measure was discretionary and could
7 result in environmental impacts, it qualifies as a "project" for purposes of CEQA and is not
8 eligible for exemption from further environmental review.

9 70. The Board failed to proceed in a manner required by law, and its exemption
10 determination was an error, omission, or neglect of duty.

11 71. The Board thereafter impermissibly utilized San Francisco Elections Code
12 section 300 to impermissibly place an invalid and illegal measure on the ballot.

13 72. Petitioners have no plain, speedy, and adequate remedy at law, and
14 unless this Court takes action and grants Petitioners' relief, the voters will be faced with an
15 unlawful measure on the November 8, 2022 ballot.

16 SECOND CAUSE OF ACTION

17 **Traditional Writ of Mandate Preventing the Director of 18 Elections from Printing the Chan/Peskin Measure on the Ballot 19 (Code of Civil Procedure § 1085, *et seq.*) 20 (Against Respondents and Defendants)**

21 73. Petitioners re-allege and incorporate herein by this reference
22 Paragraphs 1 - 60 and 62 - 72 of this Petition as set forth herein in full.

23 74. Based on the foregoing allegations regarding writs of mandate
24 pursuant to California Code of Civil Procedure sections 1085 *et seq.*, Petitioners are entitled
25 to a writ of mandate prohibiting Respondent/Defendant Arntz and DOE
26 Respondents/Defendants, and their officers, agents, and all persons acting by, through, or in
27 concert with them, from taking any action that would cause the legally invalid Chan/Peskin
28 Measure to be printed on the ballot.

75. An actual and present controversy exists between Petitioners and

1 Respondents. As demonstrated herein, Petitioners contend that Respondents have violated
2 their due process rights to participate in the public process under the Administrative Code.
3 On information and belief, Respondents contend that they have not. Petitioners, therefore,
4 request that this Court declare that the ERO's failure to notice the Chan/Peskin Measure on
5 the Planning Commission agenda, which resulted in Petitioners' (and the public's) inability
6 to appeal the modification, constitutes a violation of the Administrative Code.

7 76. Petitioners have no plain, speedy, and adequate remedy at law. Petitioners
8 therefore, seek a declaration that the Board violated the Administrative Code. Petitioners
9 also pray for relief as set forth below.

10 **THIRD CAUSE OF ACTION**

11 **Injunctive Relief Enjoining the Director of Elections 12 from Printing the Chan/Peskin Measure on the Ballot 13 (Code of Civil Procedure section 525, et seq.) 14 (Against Respondents and Defendants)**

15 77. Petitioners re-allege and incorporate herein by this reference
16 Paragraphs 1 – 60 and 62 – 70 of this Petition as set forth herein in full.

17 78. Based on the foregoing allegations regarding injunctive relief
18 pursuant to Code of Civil Procedure section 525 *et seq.*, Petitioners are entitled to a
19 temporary restraining order, preliminary injunction, and permanent injunction prohibiting
20 Respondent/Defendant Arntz, and his officers, agents, and all persons acting by, through, or
21 in concert with him, from taking any action that would cause the legally invalid
22 Chan/Peskin Measure to be printed on the ballot.

23 **FOURTH CAUSE OF ACTION**

24 **Declaratory Relief that the Chan/Peskin Measure 25 Violates the Law and Must Not Be Printed on the Ballot. 26 (Code of Civil Procedure section 1060) 27 (Against Respondents and Defendants)**

28 79. Petitioners re-allege and incorporate herein by this reference
Paragraphs 1 – 60 and 62 – 70 of this Petition as set forth herein in full.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: August 8, 2022

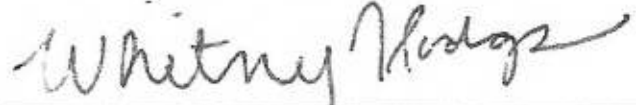
THE SUTTON LAW FIRM. PC

By: 

James R. Sutton
Bradley W. Hertz
Matthew C. Alvarez

Dated: August 8, 2022

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: 

WHITNEY A. HODGES
ALLISON C. WONG

Attorneys for Petitioners/Plaintiffs
TODD DAVID
SAN FRANCISCO HOUSING ACTION
COALITION

1 VERIFICATION

2 STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

3 I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND
4 COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know its contents. I am
5 the Executive Director of the San Francisco Housing Action Coalition, which is a party to this
6 action, and I am authorized to make this verification for and on its behalf, and I make this
7 verification for that reason.

8
9 The matters stated in the foregoing document are true and correct of my own personal
10 knowledge except as to those matters which are stated on information and belief, and as to those
11 matters, I believe them to be true.

12 Executed on August 8, 2022, at San Francisco, California.

13
14 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
15 and correct.

16
17
18 Corey Smith
19 Print Name

20 
Signature

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I, Matthew C. Alvarez, declare:

I am the attorney for petitioner and plaintiff Todd David. I make this verification for the reason that petitioner and plaintiff are absent from the county where I have my office. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Injunctive Relief and believe that the matters therein are true and on that ground allege that the matters stated therein are true.

Executed on August 8, 2022, at Los Angeles, California.

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

Matthew C. Alvarez
Print Name



Signature