

ORDINANCE NO. O-3217-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, AMENDING MUNICIPAL CODE TITLE 10, CHAPTER 3, ARTICLE 9, SECTION 10-3.901 CEQA APPEAL REQUIREMENTS AND PROCEDURES

WHEREAS, at the May 18, 2021, City Council meeting the City Council discussed amendments to the CEQA appeal requirements contained in the Redondo Beach Municipal Code; and

WHEREAS, in connection with the discussion, Councilmember Nils Nehrenheim submitted a redline version encapsulating his recommended amendments to the CEQA appeal requirements; and

WHEREAS, City Council directed staff to prepare amendments to the Redondo Beach Municipal Code regarding the CEQA appeal requirements as contained in Redondo Beach Municipal Code (RBMC) 10-3.901 and to bring the amendments back to the City Council at the July 6, 2021 City Council meeting for first reading and adoption. However, this matter was continued to July 13, 2021 due to technical difficulties with the meeting broadcast; and

WHEREAS, at the July 13, 2021 City Council meeting the City Council directed staff to work with Councilman Nils Nehrenheim to address specific timelines for the setting of appeal hearings and the deadlines for submitting evidence and arguments from appellants; and

WHEREAS, the following amendments are made in accordance with the May 18, 2021 City Council direction, the amendments submitted by Councilman Nils Nehrenheim and the July 13, 2021 City Council direction.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Redondo Beach Municipal Code Section 10-3.901 entitled, CEQA Appeal Requirements and Procedures is modified as follows:

10-3.901 CEQA appeal requirements and procedures.

(a) **“CEQA appeal”** shall mean an appeal to the City Council from a non-elected decision-making body’s or a non-elected decision-maker’s decision approving, certifying, denying approval, or denying certification of an environmental impact report (“EIR”), a negative declaration (“ND”) or mitigated negative declaration (“MND”), a determination that a project is exempt from CEQA pursuant to a statutory or categorical exemption, a subsequent or supplemental EIR, ND, or MND, addenda to a previously prepared CEQA document, master EIRs, focused EIRs, joint CEQA and NEPA documents, CEQA findings, CEQA statements of overriding considerations, or CEQA mitigation monitoring and reporting programs (collectively referenced as

“CEQA documents” in this section). Each and every party wishing to challenge the approval of a CEQA document must file a separate CEQA appeal in compliance with this section. The appellants identified in subsections (a)(1) through (a)(3) of this section may file a CEQA appeal:

(1) Any person may appeal to the City Council the decision of either a non-elected decision-making body or a non-elected decision-maker approving or certifying (“approving” or “approval”) a CEQA document; provided, however, that the person must have objected to the approval or certification of the project’s CEQA document orally or in writing prior to the close of either the public comment period provided with respect to the project pursuant to CEQA, or the final public hearing on which the CEQA document was acted upon by the non-elected decision-making body or individual. If no public hearing or other opportunity was provided to members of the public to raise objections, either orally or in writing, prior to the approval of the CEQA document, then the “objection” requirement of this subsection shall not apply. An appeal filed pursuant to this subsection shall not relieve any third party from filing their own CEQA appeal.

(2) Any project applicant may appeal to the City Council the decision of a non-elected decision-making body or a non-elected decision-maker denying the approval or certification (“denying” or “denial”) of a CEQA document for their project. An appeal filed pursuant to this subsection shall not relieve any third party from filing their own CEQA appeal.

(3) The Mayor or any member of the City Council may appeal on their own behalf any decision of a non-elected decision-making body or a non-elected decision-maker approving or denying certification of a CEQA document without fulfilling the requirements of subsection (a)(1), (a)(2), or (c) of this section; provided, however, that the City Council member or Mayor requesting the appeal shall disqualify him or herself from hearing the appeal unless he or she can certify in writing that he or she has no predisposition against or in favor of the project. An appeal filed pursuant to this subsection shall not relieve any third party from filing their own CEQA appeal.

(b) **Time to file an appeal.** Unless otherwise mandated by State law, an appeal of the approval or denial of a CEQA document by a non-elected decision-making body or a non-elected decision-maker shall be filed by the appellant and received by the City by 5:00 p.m. of the thirtieth (30) calendar day following the decision on the CEQA document (or the next working day if the thirtieth (30) calendar day falls on a weekend, holiday, or a day the City’s offices are closed). In computing thirty (30) calendar days, the day the non-elected City Body acts on the CEQA document shall be excluded. To appeal a CEQA exemption certification, the appeal shall be filed by the appellant and received by the City by 5:00 p.m. of the tenth (10th) calendar day following the decision on the CEQA document (or the next working day if the tenth (10th) calendar day falls on a weekend, holiday, or a day the City’s offices are closed). In computing ten (10) calendar days, the day the non-elected City Body acts on the CEQA document shall be excluded.

For purposes of determining whether a CEQA appeal has been timely filed, the appeal will be deemed filed on the date upon which the City Clerk has received the individual’s or group’s appeal by email, letter or other form of written communication.

The City Clerk must notify the appellant what portion of the appeal is incomplete or invalid. If an appeal is filed and deemed incomplete or invalid, the appellant shall have two (2) calendar days to resubmit after notification (or the next City Hall working day if the second (2nd) calendar day falls on a weekend, holiday, or a day when the City's offices are closed). The time to cure the application applies notwithstanding the expiration of the appeal period. An appeal resubmitted within the foregoing cure period shall be deemed timely..

(c) **Filing fee.** The appellant shall pay a filing fee as set by resolution or ordinance, if any, to the office of the City Clerk, which shall be paid within five (10) calendar days of the City Clerk notifying the appellant of the completeness and timely filing of the appeal (or the next City Hall working day if the tenth (10) calendar day falls on a weekend, holiday, or a day when the City's offices are closed).. If the appeal is granted, the appellant(s) is (are) to be refunded their filing fee within sixty (60) days.

(d) **Place to file.** The CEQA appeal and supporting documents must be filed with the office of the City Clerk. Hard copy or electronic submission is acceptable to meet this requirement. Electronic submission must be e-mailed directly to the City Clerk. Upon receipt of a CEQA appeal electronically, the City Clerk shall acknowledge receipt via response email to the appellant or appellants.

(e) **Content requirements for a CEQA appeal.** All CEQA appeals shall be in writing and shall contain the following information:

(1) A reference to the specific decision being appealed.

(2) The name, mailing address, email address, and telephone number of the person filing the CEQA appeal. The names of individuals or groups who wish to support the appeal may also be included.

(3) All grounds and issues for the CEQA appeal, specifying in detail why the appellant contends that the decision on the CEQA document does not comply with CEQA, and any supporting documentation. General environmental concerns without reference to the CEQA document or the non-elected decision-making body's actions shall not fulfill the requirements of this subsection. If new information that could not have reasonably been known to the public is discovered prior to the appeal hearing, the new information may be presented and shall be considered by the City Council in its appeal decision.

(4) If appellant has filed a concurrent appeal, then the appeal shall also include the information described in subsection (k).

(f) **Hearing.** City Clerk shall schedule the hearing within ten (10) calendar days after the filing of the appeal. Before the City Council acts on the CEQA appeal, a hearing on the matter shall be held in a timely fashion but in no event sooner than sixty (60) days following the decision on the CEQA document. However, such a hearing may be continued from time to time upon consent of the project applicant whose project is subject to the CEQA appeal. City Council shall conduct a de novo review of the decision on the CEQA document.

(g) Notice of hearing on a CEQA appeal.

(1) The City Clerk shall provide notice of the hearing to the appellant and the project applicant at least fourteen (14) calendar days after the filing of the appeal. Notice may be provided using any method reasonably calculated to provide notice to the appellant and the project applicant, including, but not limited to, mailing (posted marked)), email, or telephone. Notice may be combined with other notices related to the same project. In the event of a continuance or adjournment, no additional noticing is required pursuant to this subsection. Failure of the City to comply with subsections (g)(1) or (g)(2) shall not constitute grounds for invalidating any action on a CEQA appeal unless the error was prejudicial and the party complaining suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. The City shall also provide notice by any one of the following methods:

a. By publication at least once in a newspaper of general circulation in the City not less than ten (10) calendar days prior to the date of the hearing;

b. By mailing a written notice thereof, not less than ten (10) days prior to the date of such hearing to the applicant, to the owner of the subject property and to the owners of properties within 300 feet of the exterior boundary of the subject property or properties; such notices shall be sent by first class mail, with postage prepaid, using the addresses from the last adopted tax roll, if available;

c. By posting such notice not less than ten (10) days prior to the date of such hearing to the applicant in at least one prominent place on or about each parcel which is the subject of the proposed action, or upon utility poles or sticks along or about the street line of such parcel. In the event more than one parcel is the subject of such hearing, and such parcels comprise 200 or more feet of street frontage, at least one such notice shall be posted on or about the street line at intervals of not less than 200 feet, starting at either end of the subject properties where the property line intersects the street line; or

d. In the case of amendments to the text provisions of Title 10, and/or projects not dealing with any specific parcel of land, notification shall be by the method set out in subsection (g)(1)(a) of this section only.

(h) **Exhaustion requirement.** All of the appellant's grounds or issues for the CEQA appeal must have been: (1) listed in the contents of the CEQA appeal described in subsection (e); and (2) presented to the non-elected decision-making body or the non-elected decision-maker orally or in writing by the appellant or another person during the public comment period provided by CEQA, or prior to the close of the public hearing on the project approval by the non-elected decision-making body or the non-elected decision-maker ("exhaustion requirement"). The failure to comply with this exhaustion requirement shall be grounds for denial of those portions of the CEQA appeal which were not exhausted. The exhaustion requirement contained in subsection (2) of this paragraph shall not apply where there was no public hearing or other opportunity for the appellant to raise objections to the project's CEQA document. The limits contained in this subsection shall not apply to documents prepared by the City. Where a City Councilmember or the Mayor has filed a CEQA appeal pursuant to subsection (a)(3),

the limitations of subsections (h)(1) and (h)(2) shall apply to them individually as appellant, but not to the City as a whole.

(i) **Appellant's time to file additional documentation.** Any additional documents submitted by the appellant, other than hearing presentations, must be filed with the City Clerk fourteen (14) days prior to the appeal hearing. This deadline does not apply to new information that could not have reasonably been known to the public that is discovered as set forth in section e(3) above. The new information may be presented at the hearing and shall be considered by the City Council in its appeal decision.

Any hearing presentations must be transmitted to the City Clerk for inclusion in the public record by 5:00 p.m. on the calendar day immediately prior to the appeal hearing.

City staff presentations and supporting documents offered to the City Council for consideration during the appeal hearing shall be published at the time the agenda is posted for the appeal hearing and on the City website linked to the agenda item for the appeal hearing. The appellant(s) shall be notified of documents.

(j) **Preemption of other appeal procedures.** The appeal procedures of this section preempt all other appeal procedures in the City's Municipal Code for the purposes of a CEQA appeal. This includes, but is not limited to, the appeal procedures contained in Title 1, Chapter 4, and Section 2-9.712 of Title 2, Chapter 9, Article 7.

(k) **Concurrent appeals.** "Concurrent appeal" is defined as an appeal not based upon compliance with CEQA, but related to the same project. Such appeals may include, but are not limited to, the appeal of a Conditional Use Permit, the appeal of Planning Commission Design Review, or the appeal of other land use entitlements. Where the appellant has filed a concurrent appeal, the City Council shall consider the appeals concurrently at the same public hearing. An appeal pursuant to this section challenging a decision approving or denying a CEQA document, shall not constitute an appeal for any other actions taken by the non-elected decision-making body or the non-elected decision-maker unless:

(1) The "contents of the CEQA appeal" (described in subsection (e) of this section) specifies: (A) the other section of the Municipal Code or State law authorizing a concurrent appeal, and (B) the other action taken by the non-elected decision-making body or non-elected decision-maker which is contested by the appellant. An attachment of the concurrent appeal shall suffice; and

(2) The appellant fulfills all other non-CEQA appeal requirements of the Municipal Code or State law, including, but not limited to, payment of appeal fees for the concurrent appeal, in addition to the requirements contained in this section.

(l) **Effect of a CEQA appeal.** The filing of a CEQA appeal will stay the effect of all of the following until the City Council renders a decision on the CEQA appeal: (1) the CEQA document; (2) any project approval made pursuant to the CEQA document; (3) any notice of determination; and (4) Section 10-3.104 of Title 10, Chapter 3, Article 1.

This subsection is only applicable to the party that was specifically named as the appellant in the appeal specified in subsection (e)(2) of this section. This subsection shall not apply to any third party who has not filed their own CEQA appeal. (§ 12, Ord. 3125 c.s., eff. January 16, 2015)

SECTION 2. INCONSISTENT PROVISIONS. Any provision of the Redondo Beach Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3. SEVERANCE. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4. PUBLICATION AND EFFECTIVE DATE. This ordinance shall be published by one insertion in the official newspaper of said city and same shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

PASSED, APPROVED, AND ADOPTED this 5th day of October, 2021.

William C. Brand, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael W. Webb, City Attorney

Eleanor Manzano, CMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF REDONDO BEACH)

I, Eleanor Manzano, City Clerk of Redondo Beach, California, do hereby certify that the foregoing Ordinance No. O-3217-21 was introduced at a regular meeting of the City Council held on the 21st day of September, 2021, and approved and adopted by the City Council of Redondo Beach, California, at a regular meeting of said City Council held on the 5th day of October, 2021, and there after signed and approved by the Mayor and attested by the City Clerk, and that said Ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Eleanor Manzano, CMC
City Clerk