

BLUE FOLDER ITEM

Blue folder items are additional back up material to administrative reports and/or public comments received after the printing and distribution of the agenda packet for receive and file.

CITY COUNCIL MEETING OCTOBER 5, 2021

H13 ADOPT BY TITLE ONLY ORDINANCE NO. 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 FOR ADOPTION AND SECOND READING

Additional Public Communications

[REDACTED]

From: Rafa Sonnenfeld [REDACTED]
Sent: Tuesday, October 5, 2021 4:28 PM
To: CityClerk
Cc: Eleanor Manzano; Michael Webb; Joe Hoefgen; Bill Brand; Nils Nehrenheim; Todd Loewenstein; Christian Horvath; Zein Obagi; Laura Emdee; Jon Wizard
Subject: Re: Item H.13.
Attachments: YIMBY+HE+Compliance_v2.pdf



*ATTN: Email is from an external source: **Stop, Look, and Think** before opening attachments or links.*

Good evening Redondo City Council,

To add to what my colleague Jon has mentioned about the lawfulness (or lack thereof) of Ordinance No. 3217-21, your CEQA Appeal ordinance revision, it is important to point out that the language which was read at your 9/21/2021 City Council hearing and is now being considered for a second reading is likely to be determined by the California Department of Housing and Community Development (HCD) as a barrier to development, which may result in decertification of the city of Redondo Beach's housing element. Our organization, YIMBY Law, will assure that HCD is made aware of these barriers to development if the second reading of Ordinance No 3217-21 is adopted today.

Government Code Section 65585, which was amended in 2017 by the legislature via AB-72, grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. **HCD may revoke housing element compliance** if the local government's actions do not comply with state law.

If HCD determines that Redondo Beach's revised CEQA Appeal ordinance constitutes a barrier to housing which is inconsistent with the City's adopted housing element, and revokes the City's housing element compliance, the city could be subject to the following consequences:

- Fines and fees of between \$10,000 and \$100,000 per month
- Funding disqualification
- Mandated compliance
- Suspension of local land use authority
- Court approval of housing developments
- Moratorium on all permits

See the attached explainer for details about the above-listed potential consequences of a decertified housing element.

We encourage the city to not put itself in a position to have its housing element decertified or to pass an unconstitutional ordinance.

I am signing this letter both in my capacity as an employee of YIMBY Law and as a resident of the state of California affected by the statewide housing crisis.

Thank you,
Rafa Sonnenfeld

On Tue, Oct 5, 2021 at 4:09 PM Jon Wizard [REDACTED] wrote:

To Whom it May Concern:

Ordinance No. 3217-21 is unlawful because it deprives project proponents of their right to due process and a fair hearing by giving potential plaintiffs an ability to appeal decisions indefinitely. By extending standing to allow anyone, anywhere, regardless of whether they notified the hearing body, to appeal decisions, the city runs afoul of common law principles of timeliness and injury. Moreover, this ordinance allows anyone who brings an action against a project applicant to indefinitely allege new violations and add additional grounds and issues that would normally be disallowed during a trial. Not only is the city forbidden from unilaterally ignoring the California Government Code's establishment of planning commissions and the duty of a local agency to first hear land use matters at its planning commission, but the city cannot make up their own laws that are in conflict with state and federal law. To wit, this ordinance is facially unconstitutional, and we encourage the city to reject the second reading of this ordinance and avoid what will surely be a promptly filed public interest lawsuit to reverse its adoption.

Do what you will,
Jon

--

Jon Wizard
Policy Director [he/him](#)
Campaign for Fair Housing Elements



[YIMBY Law](#)



Book a [15-minute](#) or [30-minute](#) meeting with me
calendly.com/housingelements → housing element watchdogs calendar

--
Rafa Sonnenfeld
Paralegal he/him



HOUSING ELEMENT COMPLIANCE



YIMBY LAW

What are the consequences when a city does not adopt a certified Housing Element, or falls out of compliance with their Housing Element?



FINES & FEES

If a court finds a city to be out of compliance, the court can order the city to pay fines to the California state housing trust fund, attorney's fees to the plaintiff, or both. Cal. Gov. Code § 65585(l)(1) defines an escalating structure of fines with a minimum amount of \$10,000 per month and a maximum of \$100,000 per month. Continued failure to achieve a certified Housing Element allows the court to multiply the fines by a factor of three per month and later a factor of six per month.



FUNDING DISQUALIFICATION

In the event that a city is unable to produce a compliant Housing Element and get it certified by the state, that city is no longer eligible for a variety of state funds, including certain bonds, grants, and loans. Several state and federal funding programs consider compliance with housing element law as an eligibility or ranking criterion, e.g., SB 1 grant, Affordable Housing & Sustainable Communities program, SB 2 planning grant, Prop 1 Housing Program & Veterans Fund.



MANDATED COMPLIANCE

Courts can issue an order that a community bring its Housing Element into compliance. In *Sacramento Housing Alliance v. City of Folsom* (2011), the court forced the city to reinstate its inclusionary ordinance and update its Housing Element due to the previous element being insufficient. In extreme cases, Cal. Gov. Code § 65585(l)(3)(B) allows a court to appoint an agent with all powers necessary to bring a city's Housing Element into compliance with state law.



SUSPENSION OF LOCAL LAND USE POWER

Courts have the authority to suspend local land use powers to remove or reinstate policies as well as remove specific parcels and sites from local land use oversight. In *Mejia v. City of Mission Viejo* (2006), the court not only mandated that the city bring its Housing Element into compliance, the court also suspended Mission Viejo's land use authority over three parcels of land to preserve them for affordable housing.



COURT APPROVAL OF HOUSING DEVELOPMENTS

If a city fails to adopt a compliant housing element, the Housing Accountability Act requires that city to approve any proposed housing development project that has 20% of units set aside for low-income residents or 100% of units set aside for middle-income residents irrespective of its compliance with the applicable zoning or general plan (Cal. Gov. Code § 65589.5(d)).



MORATORIUM ON ALL PERMITS

Courts may also issue a moratorium on all permits in a city until its Housing Element is certified by HCD. Sonoma, Sacramento, and Mendocino Counties have all been subject to such moratoriums in the past as a result of legal settlements (Cal. Gov. Code § 65755(a)).

Watch a short HCD explainer on [Housing Element compliance and accountability here](#)