

## City Council Special Meeting

**Tuesday, December 6, 2022**

**4:30 PM**

**Zoom**



### **ELECTED OFFICIALS**

**Mayor** Steve Napolitano

**Mayor Pro Tem** Richard Montgomery

**Councilmember** Joe Franklin

**Councilmember** Suzanne Hadley

**Councilmember** Hildy Stern

**City Treasurer** Tim Lilligren

### **EXECUTIVE TEAM**

**City Manager** Bruce Moe

**City Attorney** Quinn Barrow

**City Clerk** Liza Tamura

**Community Development Director** Carrie Tai

**Finance Director** Steve Charelian

**Fire Chief** Michael Lang

**Human Resources Director** Lisa Jenkins

**Information Technology Director** Terry Hackelman

**Parks and Recreation Director** Mark Leyman

**Police Chief** Rachel Johnson

**Public Works Director** Erick Lee

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### **MISSION STATEMENT:**

Our mission is to provide excellent municipal services,  
preserve our small beach town character, and enhance the quality of life for our  
residents, businesses and visitors.

**CALL AND NOTICE OF A SPECIAL CITY COUNCIL MEETING**

TO MANHATTAN BEACH CITY COUNCILMEMBERS:

*NOTICE IS HEREBY GIVEN that the Mayor has called a Special Meeting of the City Council of the City of Manhattan Beach, California, to be held virtually via Zoom, at 4:30 PM on Tuesday, December 6, 2022. The agenda for the meeting is set forth below. Pursuant to the California Brown Act, no other business shall be considered or discussed.*

*Please note, that the City Council will provide an opportunity for members of the public to directly address the City Council concerning the item described in this notice before the City Council considers that item.*

*/s/ Steve Napolitano  
Steve Napolitano, Mayor*

*/s/ Liza Tamura  
Liza Tamura, City Clerk*

*In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Office of the City Clerk at (310) 802-5056 (voice) or (310) 546-3501 (TDD). Notification 36 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting. The City also provides closed captioning of all its Regular City Council Meetings for the hearing impaired.*

**CERTIFICATION OF MEETING NOTICE AND AGENDA POSTING**

*I, Liza Tamura, City Clerk of the City of Manhattan Beach, California, state under penalty of perjury that this notice/agenda was posted on Friday, December 2, 2022, on the City's Website and on the bulletin boards of City Hall, Joslyn Community Center and Manhattan Heights.*

**BELOW ARE THE AGENDA ITEMS TO BE CONSIDERED.****A. CALL MEETING TO ORDER****B. PLEDGE TO THE FLAG****C. ROLL CALL**

**D. PUBLIC COMMENTS (3 MINUTES PER PERSON)**

*Please note that members of the public will be provided the opportunity to directly address the City Council concerning the item(s) described below before the City Council considers such item(s). No other business shall be considered.*

*The City continues to offer an opportunity to participate in Council meetings via Zoom. The City Council encourages the public to participate by submitting comments in advance of the meeting, no later than 4:00 PM, December 6, 2022 (the day of the meeting), via:*

- 1) eComment at <http://www.manhattanbeach.gov/ecomment>
- 2) email to [cityclerk@manhattanbeach.gov](mailto:cityclerk@manhattanbeach.gov) or
- 3) telephone message recorded at **(310) 802-5030**.

*All of your comments provided by the deadlines above will be available to the City Council and the public prior to the meeting.*

**NOOM PUBLIC PARTICIPATION**

*If you wish to speak on any item on the agenda, please register in advance by clicking the following link: <https://citymb.seamlessdocs.com/f/publiccomment>, even when submitting this request you will need to use the "raise hand" feature via Zoom during the presentation of that Agenda Item in order to confirm with the City Clerk's Office that you wish to provide comments.*

- 1) *Join Zoom Meeting via the internet:*

*Direct URL: <https://citymb-info.zoom.us/j/93376200363>, Meeting ID: 933 7620 0363*

*During the meeting you will need to use the "raise hand" button through Zoom at the time the Agenda Item is being presented for City Council consideration.*

- 2) *Join Zoom Meeting via Phone Conference (Voice Only):*

**Phone Number: (669) 900-6833, Meeting ID: 933 7620 0363**

*During the meeting you will need to enter \*9 on the phone's dial pad to "raise your hand" at the time the Agenda Item is being presented for City Council consideration.*

*Please note, the City is not responsible for the public's use of Zoom as it relates to the software, configuration, and setting on a personal device. The public is encouraged to visit the Zoom website for information on use of this software. The City's use of Zoom is consistent with the platform features and functions as described on the Zoom.*

**E. CLOSED SESSION**

**I. ANNOUNCEMENT IN OPEN SESSION OF ITEMS TO BE DISCUSSED IN CLOSED SESSION**

**a) CONFERENCE WITH LEGAL COUNSEL (EXISTING LITIGATION)  
(Government Code Section 54956.9(d)(1))**

**Name of Case: Highrose El Porto, LLC. v City of Manhattan Beach  
Los Angeles County Superior Court  
Case No: 22STCP03962**

**This lawsuit challenges the City Council’s decision regarding the Highrose El Porto project.**

**b) CONFERENCE WITH LEGAL COUNSEL (ANTICIPATED LITIGATION)  
(Government Code Section 54956.9(d)(2)(e)(5))**

**A point has been reached where, in the opinion of the City Council on the advice of its City Attorney, based on existing facts and circumstances, there is a significant exposure to litigation against the City. Californians for Homeownership, YIMBY Law, and California Renters Legal Advocacy and Education Fund (CaRLA) have submitted two letters indicating that they intend to file litigation against the City if the City Council does not “rehear” the Highrose El Porto project, which is the topic of the litigation identified in Section a) above. In addition, the state Department of Housing and Community Development served the City with a “Notice of Violation” regarding the City Council’s decision. The referenced correspondence is included in this agenda packet, and copies are available upon request at the City Clerk’s Office at City Hall, 1400 Highland Avenue, Manhattan Beach, CA 90266.**

**Number of Cases: 2**

**II. RECESS INTO CLOSED SESSION**

**III. RECONVENE INTO OPEN SESSION**

**IV. CLOSED SESSION ANNOUNCEMENT IN OPEN SESSION**

**F. ADJOURNMENT**



CALIFORNIANS FOR  
HOMEOWNERSHIP



YIMBY  
LAW



November 22, 2022

**VIA EMAIL**

City Council  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Email: [snapolitano@manhattanbeach.gov](mailto:snapolitano@manhattanbeach.gov); [rmontgomery@manhattanbeach.gov](mailto:rmontgomery@manhattanbeach.gov);  
[jfranklin@manhattanbeach.gov](mailto:jfranklin@manhattanbeach.gov); [shadley@manhattanbeach.gov](mailto:shadley@manhattanbeach.gov);  
[hstern@manhattanbeach.gov](mailto:hstern@manhattanbeach.gov); [cityclerk@manhattanbeach.gov](mailto:cityclerk@manhattanbeach.gov);  
[citycouncil@manhattanbeach.gov](mailto:citycouncil@manhattanbeach.gov)

RE: Highrose El Porto / Project Verandas Development  
*401 Rosecrans Ave. and 3770 Highland Ave.*

To the City Council:

Californians for Homeownership, YIMBY Law, and California Renters Legal Advocacy and Education Fund (CaRLA) are 501(c)(3) organizations devoted to using impact litigation to address California's housing crisis. We are writing regarding the City's October 18, 2022 denial of the Highrose El Porto / Verandas Project. The City's denial violated the Housing Accountability Act, Gov. Code § 65589.5 ("HAA" or "the Act"), and if the City does not immediately re-hear the project consistent with the requirements of the HAA we intend to file litigation against the City. Be advised that the HAA expressly gives third-party housing organizations such as ours the right to sue to correct HAA violations. Gov. Code § 65589.5(k)(1)(a)(i).

The HAA provides that housing organizations are entitled to recover from the City all reasonable attorney fees incurred to correct the violation. Gov. Code § 65589.5(k)(2). In recent litigation against the City of Huntington Beach, the City was forced to pay Californians for Homeownership, CaRLA, and the applicant \$600,000 in attorneys' fees after being ordered to approve the project at issue there. Huntington Beach, like Manhattan Beach, based its rejection on illegitimate, pretextual health and safety concerns.

As staff have repeatedly explained to you, under the Act, the City was prohibited from denying the Project unless it made "written findings supported by a preponderance of the evidence on the record that . . . [the] project would have a specific, adverse impact upon the public health or safety," meaning "a significant, quantifiable, direct, and unavoidable impact" and that "[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact . . . other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." Gov. Code § 65589.5(j)(1). Further, any health and safety impacts must be based on "objective, identified, written public health and safety standards, policies, or conditions as they existed on the date the application was deemed complete." *Id.* (emphasis added). In this case, under the City's own regulations, the approval of this application

should be a *ministerial* decision, meaning that the City “simply applies statutes, regulations, or other fixed standards to the facts as presented, like a checklist.”<sup>1</sup> If the checklist is satisfied, the project must be approved.

We have examined the resolution of denial that you adopted on October 18, 2022, and it does not contain the required health and safety findings. The closest the resolution comes to referencing health and safety standards is its reference to “the evidence and documents cited by the Mayor during Council’s deliberations on October 18, 2022.” With that in mind, the undersigned representative of Californians for Homeownership conducted an inspection at City Hall on October 25, 2022, demanding production of “the evidence and documents cited by the Mayor during Council’s deliberations on October 18, 2022.” At the inspection, the City Clerk’s office produced only a public website<sup>2</sup> with information on the project.<sup>3</sup>

The only documents disclosed during the inspection that appear to constitute “evidence and documents cited by the Mayor during Council’s deliberations on October 18, 2022” were links to Assembly Bill 2011 and Senate Bill 1137, which were added to the City’s website after the October 18 City Council meeting but before the inspection. As City staff has repeatedly explained, however, these two bills do not satisfy the HAA’s stringent standards for proving that the project has a specific, adverse health and safety impact, and therefore they cannot constitute a valid basis for denying the Project under Government Code Section 65589.5(j)(1). This is so for several reasons.

First, and perhaps most critically, the City may only consider standards that were in place at the time the development application was deemed complete. Gov. Code § 65589.5(j)(1). According to the information on the City’s public website, the development application in this case was deemed complete on January 6, 2022.<sup>4</sup> AB 2011 and SB 1137 were not even *introduced* in the legislature until February 14, 2022 and February 16, 2022, respectively.<sup>5</sup> Therefore, even if these bills constitute health and safety standards, they were not in place at the time the application was deemed complete and the City may not permissibly base its denial on them.

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<sup>1</sup> *Mission Peak Conservancy v. State Water Resources Control Bd.*, 72 Cal. App. 5th 873, 880-881 (2021).

<sup>2</sup> <https://www.manhattanbeach.gov/departments/community-development/planning-and-zoning/current-projects-programs/highrose-el-porto>

<sup>3</sup> The City Attorney has indicated that the City intends to continue updating its website with additional materials that may fall within the scope of our inspection request. To the extent it does so, we intend to argue that any such materials could not have served as the basis for your decision to deny the project because they were not available to you at the time you rendered your decision.

<sup>4</sup> <https://www.manhattanbeach.gov/departments/community-development/planning-and-zoning/current-projects-programs/highrose-el-porto>

<sup>5</sup> [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=202120220AB2011](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220AB2011) (AB 2011); [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=202120220SB1137](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220SB1137) (SB 1137).

Second, neither AB 2011 nor SB 1137 are public health and safety standards. These bills do not prohibit the placement of housing within a certain radius of refineries, nor do they contain any statements or findings that locating housing near refineries is a health and safety hazard. AB 2011 simply says that housing within 3,200 feet of a refinery is ineligible for *that bill's* state-created ministerial approval process. As your staff has confirmed, "AB 2011 does not change the City's local review process,"<sup>6</sup> which provides a completely independent ministerial review pathway. SB 1137 restricts the approval of new wells within 3,200 feet of homes, but as staff has confirmed "SB 1137 does not regulate where homes can go."<sup>7</sup>

Third, the HAA only permits a denial where the *project* is a direct cause of a public health and safety impact, not where some other pre-existing use may cause a health and safety impact that affects the project.

Therefore, the City's denial was in violation of the HAA because AB 2011 and SB 1137 do not provide a sufficient basis for the denial, and the City did not refer to any other basis for its denial. Furthermore, the City Council was aware that AB 2011 and SB 1137 were inapplicable to this project and could not be used to deny the project under the HAA at the time it rendered its decision on October 18, and it nevertheless chose to deny the Project. This post-hoc attempt to justify a clear violation of state law by using laws that do not apply and are not even in effect yet demonstrates that the City's denial was in bad faith. Because the decision was made in bad faith, the Court has the authority to directly order the project approved. Gov. Code § 65589.5(k)(1)(a)(i). If we are required to litigate this denial, we will ask the Court to do just that.

In order to avoid litigation and the City's liability for our attorney fees, we ask that you schedule this project for re-hearing no later than November 23, 2022. If the project is not heard by that date, we intend to initiate litigation as described above.

Sincerely,

Matthew Gelfand  
*for Californians for  
Homeownership*

Kenneth Stahl  
*for YIMBY Law*

Dylan Casey  
*for CaRLA*

cc: Quinn Barrow, Esq., City Attorney (by email to [qbarrow@rwglaw.com](mailto:qbarrow@rwglaw.com))  
Michael Shonafelt, Esq. (by e-mail to [michael.shonafelt@ndlf.com](mailto:michael.shonafelt@ndlf.com))

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<sup>6</sup> <https://www.manhattanbeach.gov/departments/community-development/planning-and-zoning/current-projects-programs/highrose-el-porto>.

<sup>7</sup> *Id.*



CALIFORNIANS FOR  
HOMEOWNERSHIP



YIMBY  
LAW



November 23, 2022

**VIA EMAIL**

Quinn M. Barrow, Esq.  
City Attorney, City of Manhattan Beach  
Richards Watson Gershon  
350 South Grand Avenue, 37th Floor  
Los Angeles, CA 90071  
Email: qbarrow@rwglaw.com

RE: Highrose El Porto / Project Verandas Development  
401 Rosecrans Ave. and 3770 Highland Ave.

Dear Mr. Barrow:

We write in response to your November 22 letter. In light of the upcoming holiday, and based on the request implicit in your letter, we will give the City until December 9, 2022 to rehear the project.<sup>1</sup>

Sincerely,

Matthew Gelfand  
*for Californians for  
Homeownership*

Kenneth Stahl  
*for YIMBY Law*

Dylan Casey  
*for CaRLA*

cc: Michael Shonafelt, Esq. (by e-mail to michael.shonafelt@ndlf.com)

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<sup>1</sup> In response to the comment about attorneys’ fees in your letter, we note that a prevailing housing organization in litigation under the Housing Accountability Act is entitled to an award of attorneys’ fees as a matter of right. Gov. Code § 65589.5(k)(2) (“A housing organization shall be entitled to reasonable attorney’s fees and costs if it is the prevailing party in an action to enforce this section.”); *see also* Gov. Code § 65589.5(k)(1)(A)(ii) (more general fee shifting provision applicable to all petitioners “except under extraordinary circumstances”).



**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



November 28, 2022

Bruce Moe, City Manager  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Dear Bruce Moe:

**RE: City of Manhattan Beach Denial of Highrose Housing Project and  
Applicability of the Housing Accountability Act and State Density Bonus Law  
– Notice of Violation**

The California Department of Housing and Community Development (HCD) has reviewed the City Council's denial of the Highrose Housing Project (Project) on October 18, 2022, and has found that in denying the Project, the City of Manhattan Beach (City) has violated the Housing Accountability Act (HAA) (Gov. Code, § 65589.5) and the State Density Bonus Law (SDBL) (Gov. Code, § 65915), as detailed in this letter. As you are aware, the State of California is in a housing crisis, and the provision of housing is a priority in the highest order.

The City has 30 days to respond to this letter. HCD requests that the City provide a written response to these findings no later than December 28, 2022. HCD will review and consider the City's written response, if any, before taking any action authorized by Government Code section 65585, subdivision (j), including referral to the California Office of the Attorney General.

**Background and Project Description**

The Project contains 79 units, including 73 market-rate units and six units affordable to very low-income (VLI) households). It is located at 401 Rosecrans Avenue (APN: 4137-001-031) and 3770 Highland Avenue (APN: 4137-001-027). The Project is entitled to a 35-percent density bonus because 11 percent of the base density (six units) is affordable to VLI households (Gov. Code, § 65915, subd. (f)(2)). The Project includes the following five development standard waiver requests: (1) buildable floor area, (2) height requirements, (3) number of stories, (4) side-yard setback requirement for proposed electrical transformer only, and (5) rear and side setback requirements for building walls over 24 feet in height. Additionally, the Project includes one requested concession for the maximum wall/fence height in setbacks.

On March 29, 2022, the Project received ministerial approval from the Community Development Director, who determined that it was consistent with the General Plan, Local Coastal Program, Municipal Code, and state law. The City found the Project to be in compliance with all objective standards except those lawfully modified under the SDBL (Gov. Code, § 65589.5, subd. (j)(3)). The Project was subsequently appealed to the Planning Commission, and on June 8, 2022, the Planning Commission upheld the Director's approval. The Project was then appealed to the City Council, which ultimately voted to deny the Project on October 18, 2022. The City Council made no findings supporting its denial. Prior to the City's denial of the Project, HCD sent a Letter of Support and Technical Assistance dated September 1, 2022, to the City stating that, based on information reviewed, the HAA and SDBL applied to the Project.

The City Council denied the Project despite HCD's technical assistance informing the City that the Project qualifies for the protections of the HAA and SDBL, which both require that a local agency make specific written findings in order to lawfully deny a qualifying project.

### **Analysis of Project Denial**

The contents of City Council Resolution No. 22-0124, inclusive of the administrative record and documents cited by the Mayor during Council's deliberation, do not satisfy the statutory requirements for written findings of denial applicable under the HAA (Gov. Code, § 65589.5) and SDBL (Gov. Code, § 65915).

HCD listened to the City Council's deliberations at both meetings, and while councilmembers expressed a variety of concerns, none identified a specific adverse impact that would support Project denial. At the meeting on October 18, 2022, the Council discussed Assembly Bill 2011 (Chapter 647, Statutes of 2022) insofar as this law contains a provision removing certain projects located near oil refineries, such as the Project, from eligibility for CEQA streamlining.

Even if it had been in effect at the time of the Project application, AB 2011 is irrelevant to the Project for many reasons, including: (1) the Project does not seek CEQA streamlining under AB 2011; (2) the City's existing planning documents (e.g., General Plan, Local Coastal Program) permit residential uses on the site; and (3) CEQA and other environmental impact assessments have been performed to permit residential land uses on the site.

### **Housing Accountability Act Violation**

The City Council wrongfully denied the Project under the HAA by failing to adopt written findings supported by a preponderance of the evidence on the record that the Project would (1) have a specific, adverse impact upon the public health or safety and (2) that there is no feasible method to satisfactorily mitigate or avoid the identified adverse impact (Gov. Code, § 65589.5, subd. (j)(1)).

### **State Density Bonus Law Violation**

The City Council wrongfully denied the Project under the SDBL by failing to grant the Project a density bonus (Gov. Code, § 65915, subd. (b)) and by failing to grant the requested concessions and waivers (Gov. Code, § 65915, subds. (d-e)) to which the Project is entitled.

To have lawfully denied the requested concession, the City must have made one or more of the following specific written findings at the time of denial (Ibid): the concession would (1) not result in a cost reduction, (2) have a specific adverse impact on health or safety (as defined), or (3) be contrary to state or federal law (Gov. Code, § 65915, subd. (d)). To have lawfully denied one or more of the development standard waivers, the City must have determined that the granting of each waiver would have had a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon health or safety, and for which there was no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The City made no such findings.

### **Housing Element Law**

The City's Draft Housing Element dated August 12, 2022, includes a description of the Project in Section 5 (Planned, Approved, and Prospective Projects) of Appendix E (Sites Analysis and Inventory). The Project is described as providing 79 units, including 73 above moderate-income units and six lower-income units, which is consistent with the Project denied by the City Council. While the denial of the Project does not constitute a violation of State Housing Element Law, it calls into question the City's commitment to achieving its housing production goals.

### **Conclusion**

HCD finds that by improperly denying the Project, the City is in violation of the Government Code sections referenced above. The City must provide a written response to this finding by December 28, 2022. After that date, HCD may move forward with any of the actions authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

The City's response should include, at a minimum, a specific plan and timeline for corrective action, including (1) the repeal of the City's resolution denying the Project and (2) the reconsideration and approval of the Project as proposed.

Bruce Moe, City Manager  
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If you have questions or would like to discuss the content of this letter, please contact Brian Heaton of our staff at [brian.heaton@hcd.ca.gov](mailto:brian.heaton@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability