

Communication from Public

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Council File No: 22-1162
Comments for Public Posting: See attached.

February 28, 2023

VIA MAIL, EMAIL & ONLINE:

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**RE: Appeal Hearing for Two Interrelated Projects (Council File Nos. 22-1162, -S1, -S2);
El Sol Project (719-725 E. 5th St.) DCP Case Nos. ZA-2021-9890, ENV-2017-4735;
Rendon Hotel Project (2053 E. 7th St.) DCP Case Nos. ZA-2017-4734, ENV-2017-4735**

On behalf of appellant UNITE HERE Local 11 (“**Local 11**” or “**Appellant**”), this office submits this letter to respectfully request that the City of Los Angeles (“**City**”) provide written confirmation: (1) that a public hearing will be held on Local 11’s appeals involving the above-referenced interrelated projects; (2) of a date certain for all purported deadlines for City action here; and (3) that Appellant will receive mailed, written notice of any public hearing or any form of action or deemed denial, including notice of applicable deadlines to exhaust administrative remedies.

For brief background (more fully explained in Local 11’s appeal letter),¹ the proposed 103-room hotel development located at 2053 East 7th Street (“**Rendon Hotel Project**”) and the re-establishment of 42 single-room occupancy units located at 719 E. 5th Street (“**El Sol Hotel Project**”) are interrelated because they both rely on the same Mitigated Negative Declaration (“**MND**”). The Rendon Hotel Project includes certain entitlements that only the City Council can approve after a recommendation by the City Planning Commission (“**CPC**”) (associated with Council File Nos. 22-1162). The Rendon Hotel Project also includes entitlements approved by CPC that were appealed by Local 11 on or around September 18, 2022 (associated with Council File Nos. 22-1162-S1). The El Sol Hotel Project includes a variance approved by CPC that Local 11 timely appealed on or around September 19, 2022 to the City Council (associated with Council File No. 22-1162-S2). Thus, all the entitlements related to the Rendon Hotel Project and El Sol Hotel Project (collectively “**Projects**”) are currently pending City Council action.

We write to confirm that, notwithstanding any time limits referenced in the Los Angeles Municipal Code (“**LAMC**” or “**Code**”), the City may not deem denied Local 11’s appeals based on the City Council’s failure to act timely under the LAMC or state law. First, timelines under the Code or state law have been tolled due to the State and City remaining in a COVID State of Emergency. The Mayor’s Emergency Order—that “toll[ed] all Zoning Code provisions regarding the Time to Act on filed applications”—is effective until February 28, 2023 consistent with the end of the State of California COVID-19 emergency.² This tolling was confirmed by Deputy City Attorney Ernesto

¹ https://clkrep.lacity.org/online/docs/2022/22-1162-S2_misc_2_10-20-22.pdf.

² See e.g., City of Los Angeles Emergency Authority (3/21/20), https://lachamber.com/clientuploads/pdf/2020/2020-03-21_MEG_Emergency_Order_-_Toll_Land_Use_Timelines.pdf; see also Mayor Karen Bass (posted 12/16/22) Executive Directive No. 1, <https://mayor.lacity.gov/news/mayor-bass-signs-executive->

Vasquez, who stated this during a recent Area Planning Commission Hearing when asked about this very issue.³ Second, Appellant has relied on this tolling confirmation by the Deputy City Attorney and, thus, the City is estopped from reversing this position and deeming any appeals denied by operation of law. Furthermore, because Rendon Hotel Project cannot move forward without City Council's action on the legislative entitlements (e.g., general plan amendment, zone change), the applicant will suffer no prejudice by the City Council's consideration of all approvals and the appeals in a single combined hearing.

Additionally, the City may not deem deny Local 11's appeals by simply posting a memo to the Council File—Local 11 must be given mailed written notice of its appeal rights being triggered (i.e., LAMC § 11.5.13). Variances and conditional use permits are quasi-adjudicatory and subject to notice and hearing requirements. (See *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612 [government decisions that are adjudicative in nature are subject to procedural due process principles]; see also *Save Lafayette Trees v. East Bay Regional Park Dist.* (2021) 66 Cal.App.5th 21, 52-53 [noting caselaw of quasi-adjudicatory land use decision affording petitioners notice and opportunity to be heard].) In *Horn*, the Court held the agency failed to give proper notice when it only provided notice by posting within central public buildings and directly mailing to persons who had specifically requested notice. (*Horn*, supra, at 617.) Here, to deem deny either of Local 11's appeals on the underlying Projects' entitlements would trigger Local 11's right to file a CEQA appeal, which would "stay" the entitlements until action is taken by the City Council. (LAMC § 11.5.13.D.) This appeal right cannot be undermined by simply refusing to provide reasonable mailed written notice to the Appellant of any denial (including any denial on the basis that timelines have allegedly expired).

Furthermore, the City cannot evade CEQA appeal rights though deemed denials when non-CEQA Code deadlines expire. In 2021, the City took the incorrect position (before backtracking in the end) that the City Council lost jurisdiction on or deemed denied a CEQA appeal based on the expiration of a tract map deadline unrelated to the City's CEQA appeal procedures (see LAMC § 11.5.13 et seq.).⁴ As explained then, CEQA appeals cannot be deemed denied, nor can the City

[directive-dramatically-accelerate-and-lower-cost-affordable-housing](https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/#:~:text=SACRAMENTO%20E2%80%93%20Today%2C%20Governor%20Gavin%20Newsom,used%20to%20combat%20COVID%2D19); Governor Newsom to End the COVID-19 State of Emergency (10/17/22) ("... COVID-19 State of Emergency will end on February 28, 2023..."), <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/#:~:text=SACRAMENTO%20E2%80%93%20Today%2C%20Governor%20Gavin%20Newsom,used%20to%20combat%20COVID%2D19>.

³ Central LA APC hearing Audio (6/28/22) mm:ss 5:50-7:00 (Deputy City Attorney comment on time to act being tolled), https://planning.lacity.org/plndoc/Audio/Central_LA/2022/06-28-2022/6_ZA_2019_5239.mp3; see also South LA APC hearing Minutes (7/19/22) p. 1 (listing Mr. Velazquez present during the previous Project appeal hearing), <https://planning.lacity.org/dcpapi/meetings/document/73527>.

⁴ For example, in another recent case, the City unlawfully claimed that the Vesting Tract Map ("VTT") and CEQA appeals were deemed denied for failure to act via a memo issued eight months later—without mailed notice. (See Council File No. 20-0813 (7/24/20) Memorandum to File, p. 1, https://clkrep.lacity.org/online/docs/2020/20-0813_misc_7-24-20.pdf; see also Council File No. 20-0813-S1 (9/29/21) Note to File, pp. 1-2, https://clkrep.lacity.org/online/docs/2020/20-0813-S1_misc_9-29-21.pdf.) Despite the fact that the tract entitlement appeal was deemed denied, the CEQA appeal was in fact heard. (Id., p. 2 ["... the City has elected to treat the second level [VTT] appeal as a CEQA appeal under Section 11.5.13 and consider the CEQA-related appeal at the October 5, 2021 PLUM meeting ... the EIR certification shall be treated as it has been set aside and the Tract Map entitlement shall not become effective until the appeal is heard and the EIR certified by the City Council." Emph. added.])

Council divest itself of its mandatory duty to hear CEQA appeals.⁵ In late-2022, under similar circumstances, the City re-opened CEQA appeal procedures after the City Clerk failed to provide appellants specific notice of a City Clerk memo that had been posted on the Council File erroneously claiming the appeals were deemed denied by operation of law.⁶

In sum, the City Council should consider all appeals and project approvals associated with the two Projects and Local 11 has a right to reasonable notice of applicable timelines and appeal rights afforded. Thus, we respectfully request written confirmation that: (1) a public hearing will be held on Local 11's appeals; (2) a date certain of all purported deadlines for City action; and (3) that Appellant will receive mailed, written notice of any public hearing or any form of action or deemed denial, including notice of applicable deadlines to exhaust administrative remedies.

Thank you for the consideration. Please contact the undersigned should you have questions or need more information.

Sincerely,

LAW OFFICE OF GIDEON KRACOV



Jordan R. Sisson

⁵ See Natural Resources Defense Council ("NRDC"), et al. (9/29/21) RE: Council File Nos. 20-0813 & 20-0813-S1, https://clkrep.lacity.org/online/docs/2020/20-0813-S1_PC_AB_09-29-2021.pdf.

⁶ See Council File Nos. 22-1055 and 22-1055-S1.