

**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

**TO:** Planning Commission

**FROM:** Anne McIntosh, Director of Community Development

**BY:** Angela Reynolds, Contract Planner

**DATE:** June 13, 2018

**SUBJECT:** Appeal of the Community Development Director's Residential Land Use Determination That a Proposed Senior Citizens Facility at 250-400 North Sepulveda Boulevard is a Residential Use and Not a Commercial Use (Sunrise Senior Living)

**RECOMMENDATION**

Staff recommends that the Planning Commission uphold the Community Development Director's decision, thereby **DENYING** the subject appeal.

**APPELLANT / APPLICANT**

Sunrise Senior Living  
c/o Ellen Berkowitz  
1840 Century Park East  
LA CA 90067

**PROJECT OVERVIEW**

***Location***

250-400 North Sepulveda Blvd.  
Manhattan Beach

***Site***

53,283 square feet (3 commonly owned parcels)

***Existing Development***

12,582 square feet total (3 buildings) of restaurant, retail, and office uses

***Project Description***

80,800 square feet of senior facilities  
(111-unit community with elderly care)

## **BACKGROUND**

### ***History***

The proposed project was submitted on December 21, 2017. The application was for a senior residential care, general use facility with 111 for rent residential units at 250-400 North Sepulveda Boulevard in the General Commercial (CG) zone. (Exhibit A) At that time the application was found to be incomplete and a letter was issued to the applicant, on January 12, 2018. In response to this letter the applicant submitted additional information and the application was deemed complete on April 17, 2018.

## **DISCUSSION**

### ***Zoning Determination (Exhibit B)***

Based on a tour of a Sunrise Senior facility in Torrance on March 15, 2018 and a review of the complete application mentioned above, the Community Development Director determined, per Manhattan Beach Municipal Code (MBMC) section 10.08.010, that the primary land use for the proposed Sunrise Senior Living facility is Residential and thus issued a zoning determination letter that informed the applicant that the proposed project was found to be residential in nature, with ancillary non-medical care. The tour of a Sunrise Senior facility in Torrance with the following analysis of the proposed project location aided in making the residential land use determination.

MBMC section 10.08.010 allows that..."The Community Development Director may determine that a specific use shall not be deemed to be within a classification, whether or not named within the classification, if its characteristics are substantially incompatible with those typical of uses named within the classification." The Community Development Director's decision may be appealed to the Planning Commission.

**ZONING:** The purpose of the General Commercial district is "To provide opportunities for the full range of retail and service businesses deemed suitable for location in Manhattan Beach, including businesses not permitted in other commercial districts because they attract heavy vehicular traffic or have certain adverse impacts; and to provide opportunities for offices and certain limited industrial uses that have impacts comparable to those of permitted retail and service uses to occupy space not in demand for retailing or services." This zone is a heavy automobile-oriented zone which allows for larger commercial retail and office uses.

**GENERAL PLAN:** The General Plan states "General Commercial (CG) category provides opportunities for a broad range of retail and service commercial and professional office uses...limited industrial uses are also permitted consistent with zoning regulations." Based on a reading of the zoning code and the General Plan, it is determined that uses in the CG zone are heavy commercial in nature and that residential uses are incompatible and not allowed on Sepulveda.

The Housing Element distinguishes between Residential Care, General, and Senior Housing in that parking requirements for Residential Care are measured by bed quantities, whereas Senior Housing is measured by unit quantities. This supports the determination that the proposed project is residential.

The Community Development Director's decision may be appealed to the Planning Commission.

### *Appeal (Exhibit C)*

On May 23, 2018 via e-mail and hand delivery the applicant, Ellen Berkowitz, delivered an appeal of the Community Development Director's determination that the Sunrise Senior Living project falls into a residential land use category.

In this appeal, there are three (3) main points of contention cited to the Community Development Director's determination. These are referred to as "City Statements" in Exhibit C. Those points are listed below, each followed by explanations supporting the Community Development Director's determination.

1. City Statement: Under the "Residential Care, General" classification, the residential component is secondary to the care component of the use.

The City maintains that the CG use classification is meant to be a residential care facility that is a commercial use with residency as a secondary part of the use. In this case the proposed project is primarily residential senior housing with an ancillary use of non-medical care.

2. City Statement: Participants in residential care facilities typically have other residences that serve as their primary residence.

The City maintains that the Residential Care, General zoning category on Sepulveda is meant to be commercial, in the sense that patients that need non-medical care would come to this use for the care they need, and maintain a primary residence elsewhere.

The proposed project does not fit this interpretation, as it offers for-rent apartments.

3. City Statement: The project is a primary residence for occupants, and thus, it is considered a residential senior housing project. The definition of "Residential Care General" does not, and is not intended to, cover residential senior housing project like the proposed Project.

The City believes that the proposed project is primarily residential project. This determination is made by the factors described above in the discussion section of this report.

In the project description provided by the appellant, it is clear that there are 111 permanent apartments for the seniors to reside in. Also, stated is that some of the seniors that would reside there would not need the ancillary non-medical services provided. This establishes a pattern of residential use which in contrast of a commercial use established for the CG zone.

## CONCLUSION

The City supports multi-unit senior housing with ancillary non-medical services. There are several zoning categories where this use is supported. This use is permitted in the RM Medium-Density Residential District and the RH High-Density Residential District. Also, the MBMC has designated a Residential Senior Citizen district with development standards designed specifically for this type of land use.

Staff recommends that the Planning Commission uphold the Community Development Director's decision that the proposed project be designated residential, thereby **DENYING** the subject appeal

### Attachments:

- Exhibit A – Initial Application
- Exhibit B – Zoning Determination
- Exhibit C – Appeal



# MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH  
 COMMUNITY DEVELOPMENT DEPARTMENT

*Office Use Only*  
 Date Submitted: 12/21/17  
 Received By: DOD  
 F&G Check Submitted:

250 - 400 S. Sepulveda Blvd.  
 Project Address  
 See Attached  
 Legal Description  
 General Commercial  
 General Plan Designation

General Commercial District 1  
 Zoning Designation Area District

For projects requiring a Coastal Development Permit, select one of the following determinations<sup>1</sup>:

- |   |   |
|---|---|
| Project located in Appeal Jurisdiction                                    | Project <u>not</u> located in Appeal Jurisdiction                           |
| <input type="checkbox"/> Major Development (Public Hearing required)      | <input type="checkbox"/> Public Hearing Required (due to UP, Var, ME, etc.) |
| <input type="checkbox"/> Minor Development (Public Hearing, if requested) | <input type="checkbox"/> No Public Hearing Required                         |

**Submitted Application (check all that apply)**

- |   |   |
|---|---|
| <input type="checkbox"/> Appeal to PC/PPIC/BBA/CC 4225                            | <input type="checkbox"/> Use Permit (Residential) 4330                        |
| <input type="checkbox"/> Coastal Development Permit 4341                          | <input checked="" type="checkbox"/> Use Permit (Commercial) 4330 <b>6,287</b> |
| <input type="checkbox"/> Continuance 4343   | <input type="checkbox"/> Use Permit Amendment 4332                            |
| <input type="checkbox"/> Cultural Landmark 4336                                   | <input type="checkbox"/> Variance 4331  |
| <input checked="" type="checkbox"/> Environmental Assessment <b>4225 3,079</b>    | <input type="checkbox"/> Park/Rec Quimby Fee 4425                             |
| <input type="checkbox"/> Minor Exception <b>4333</b>                              | <input type="checkbox"/> Pre-application meeting 4425                         |
| <input type="checkbox"/> Subdivision (Map Deposit) 4300                           | <input checked="" type="checkbox"/> Public Hearing Notice 4339 <b>70.00</b>   |
| <input checked="" type="checkbox"/> Subdivision (Tentative Map) 4334 <b>3,557</b> | <input type="checkbox"/> Lot Merger/Adjust. \$15 rec. fee-4225                |
| <input type="checkbox"/> Subdivision (Final) 4334                                 | <input type="checkbox"/> Zoning Business Review 4337                          |
| <input type="checkbox"/> Subdivision (Lot Line Adjust.) 4335                      | <input type="checkbox"/> Zoning Report 4340                                   |
| <input type="checkbox"/> Telecom (New or Renewed) 4338                            | <input type="checkbox"/> Other  |

X Note: Subdivision (Vesting Tentative Parcel Map)

**Fee Summary (See fees on reverse side)**

Total Amount: \$ 12,993 (less Pre-Application Fee if applied within past 3 months)  
 Receipt Number: \_\_\_\_\_ Date Paid: \_\_\_\_\_ Cashier: \_\_\_\_\_

**Applicant(s)/Appellant(s) Information**

Sunrise Senior Living  
 Name

7902 Westpark Drive, McLean VA **22101**  
 Mailing Address

Potential Lessee

**Applicant(s)/Appellant(s) Relationship to Property**

Ellen Berkowitz (Attorney) 310-586-7763/berkowitz@gtlaw.com

Contact Person (include relation to applicant/appellant) Phone number / email

1840 Century Park East, #1900, Los Angeles, CA 90067  
 Address

*[Signature]* 571-279-1918 / philip.kroskin@sunriseseniorliving.com  
 Applicant(s)/Appellant(s) Signature Phone number/.email

**Complete Project Description- including any demolition (attach additional pages as necessary)**

See Attached

<sup>1</sup> An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)

# OWNER'S AFFIDAVIT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
 COUNTY OF LOS ANGELES

I/We Stuart Sackley being duly sworn, depose and say that I am/we are the owner(s) of the property involved in this application and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my/our knowledge and belief(s).

x Stuart Sackley  
 Signature of Property Owner(s) – (Not Owner in Escrow or Lessee)

Stuart Sackley  
 Print Name

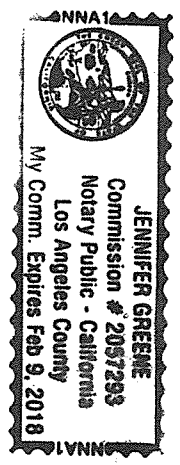
4108 The Strand, Manhattan Beach, CA 90266  
 Mailing Address

310-545-2200 / stuartsackley@aol.com  
 Telephone/email

Subscribed and sworn to (or affirmed) before me this 17 day of November, 2017 by Stuart Sackley, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Jennifer Greene  
 Notary Public

SEAL



## Fee Schedule Summary

Below are the fees typically associated with the corresponding applications. Additional fees not shown on this sheet may apply – refer to current City Fee Resolution (contact the Planning Division for assistance.) Fees are subject to annual adjustment.

**Submitted Application (circle applicable fees, apply total to Fee Summary on application)**

<b>Coastal Development Permit</b>	
Public hearing – no other discretionary approval required:	\$ 4,787
Public hearing – other discretionary approvals required:	2,108
No public hearing required – administrative:	1,303
<b>Use Permit</b>	
Use Permit:	\$ 6,287
Master Use Permit:	9,703
Master Use Permit Amendment:	5,037
Master Use Permit Conversion:	4,623
<b>Variance</b>	
Filing Fee:	\$ 6,078
<b>Minor Exception</b>	
Without notice:	\$ 1,452
With notice:	1,952
<b>Subdivision</b>	
Certificate of Compliance:	\$ 1,625
Final Parcel Map + mapping deposit:	528
Final Tract Map + mapping deposit:	732
Mapping Deposit (paid with Final Map application):	500
Merger of Parcels or Lot Line Adjustment:	1,133
Quimby (Parks & Recreation) fee (per unit/lot):	1,817
Tentative Parcel Map (4 or less lots / units) No Public Hearing:	1,309
Tentative Parcel Map (4 or less lots / units) Public Hearing:	3,557
Tentative Tract Map (5 or more lots / units):	4,060
<b>Environmental Review (contact Planning Division for applicable fee)</b>	
Environmental Assessment (no Initial Study prepared):	\$ 215
Environmental Assessment (if Initial Study is prepared):	3,079
Fish and Game/CEQA Exemption County Clerk Posting Fee <sup>2</sup> :	75
Public Hearing Notice applies to all projects with public hearings and covers the City's costs of envelopes, postage and handling the mailing of public notices. Add this to filing fees above, as applicable:	\$ 70

<sup>2</sup>Make a separate \$75 check payable to LA County Clerk, (DO NOT PUT DATE ON CHECK)

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 4167-024-033, 4167-024-034, 4167-024-032 and 4167-023-031**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel A:

The Northerly 80 feet of Lots 10, 11 and 12 in Block 30 of Tract No. 142, in the City of Manhattan Beach, County of Los Angeles, State of California, as per map recorded in book 13 page(s) 182 and 183 of Maps, in the Office of the county recorder of Said County.

Parcel B:

Lots 10, 11, and 12 and the Northerly 50 feet of Lots 15, 16 and 17 in Block 30 of Tract No. 142, in the City of Manhattan Beach, County of Los Angeles, State of California, as shown on a map recorded in book 13, page(s) 182 and 183 of Maps, in the Office of the county recorder of Said County.

Except from Lots 10, 11 and 12, the Northerly 80 feet.

Parcel C:

Lots 15, 16 and 17 in Block 30 of Tract No. 142, in the City of Manhattan Beach, County of Los Angeles, State of California, as shown on a map recorded in book 13, page(s) 182 and 183 of Maps, in the Office of the county recorder of Said County.

Except therefrom the Northerly 50 feet of said Lots.

Also except, all oil, oil rights, mineral, mineral rights, natural gas, natural gas rights, and other hydrocarbons in or under said Land as reserved in deed from the Superior Oil Company to Tyler Construction Co., a partnership, recorded May 23, 1952 in book 39004 page 157 of official records.

Also except all oil, oil rights, mineral, mineral rights, natural gas, natural gas rights, and other hydrocarbons that may be within or underlying Lots 15 and 16 of Block 30 as deed to Superior Oil Company, a corporation by deed recorded November 3, 1953 in book 43077 page 389 of official records.

Parcel D:

That portion of Third Street vacated, lying between the Southerly prolongation of the Westerly line of Lot 15 and the Southerly prolongation of the Easterly line of Lot 17 in Block 30 of Tract No. 142, in the City of Manhattan Beach, County of Los Angeles, State of California, as shown on a map recorded in book 13, page(s) 182 and 183 of Maps, in the Office of the county recorder of Said County.

Parcel E:

The North 15 feet of Lot 10, 11 and 12 in Block 35 of Tract No. 142, in the City of Manhattan Beach, County of Los Angeles, State of California, as per map recorded in book 13 Page 182 and 183 of Maps, in the office of the county recorder of said county.

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## City of Manhattan Beach

1400 Highland Avenue, Manhattan Beach, CA 90266  
Phone: (310) 802-5258 Fax: (310) 802-5251

**May 9, 2018**

Ms. Ellen Berkowitz, Shareholder  
Mr. Brady McShane, Shareholder  
Ms. Stephanie A. Hawner, Land Use Planner  
Greenberg Traurig, LLC  
1840 Century Park East  
Suite 1900  
Los Angeles, California 90067

**SUBJECT: Sunrise Assisted Living Project, 250-400 North Sepulveda Boulevard --  
Inconsistency Determination Letter**

The Department of Community Development has reviewed your application for a Use Permit to allow the development of a senior residential housing project ("Sunrise Project") at 250–400 North Sepulveda Boulevard in the City of Manhattan Beach ("City"). As you know, I visited the recently constructed Sunrise development in Torrance with Mike Grannis on March 15, 2018. I was able to tour the entire facility and learn that it is the primary residence for the occupants. While they share meals and some residents receive care for certain physical or mental needs they may have, this is a residential "senior housing" project.

This letter serves as written documentation that the Sunrise Project is inconsistent with the applicable zoning and General Plan designation. Pursuant to Government Code Section 65589.5(j)(2), cities are required to provide an applicant "with written documentation identifying the provision or provisions, and an explanation of the reason or reasons" if it "considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, policy, ordinance, standard, requirement or other similar provision[.]" This provision of Government Code Section 65589.5, enacted by Assembly Bill 1515, became effective on January 1, 2018, after the initial application submittal for the Sunrise Project. Accordingly, the statute, and any requirements contained therein, may not apply to the Sunrise Project. Nevertheless, the City is providing this letter out of courtesy and an abundance of caution.

The Sunrise Project is considered inconsistent with the applicable General Plan and zoning designations of General Commercial (GC) and Commercial General (CG), respectively. The proposed senior residential housing development is inconsistent with the regulations applicable to this land use designation.

As described in the General Plan, the "General Commercial category provides opportunities for a broad range of retail and service commercial and professional office uses . . . Limited industrial uses are also permitted consistent with zoning regulations." It does not currently envision or provide for residential uses in General Commercial areas.

**EXHIBIT B  
PC MTG 06-13-18**

Ms. Ellen Berkowitz, Shareholder  
Mr. Brady McShane, Shareholder  
Ms. Stephanie A. Hawner  
May 9, 2018  
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Accordingly, the Municipal Code permits in the CG District a wide range of commercial uses, but does not permit residential uses. The closest land use classification conditionally allowed in the CG District is Residential Care, General. Following is the Manhattan Beach Municipal Code excerpt defining this use:

**10.08.040 - Public and semipublic use classifications.**

**N. Residential Care, General. Twenty-four (24) hour non-medical care for seven (7) or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those services and facilities licensed by the State of California.**

This classification is a Public and Semipublic use type that is intended primarily as a care facility, frequently for juvenile wards of the court or other individuals with issues such as addiction, to provide personal services, supervision, protection, or assistance. The residential component of residential care is secondary to the care. Participants in residential care facilities typically have other residences that serve as their primary residence. This definition does not, and is not intended to, cover senior living projects or senior residential housing like Sunrise.

Please be aware that on September 19, 2017, the City Council directed staff to convene an Ad Hoc Community Working Group to study and discuss potential amendments to the City's regulations over the Sepulveda Corridor. The working group recently made recommendations for Planning Commission and City Council consideration. At its meeting on April 25, 2018, the Planning Commission asked questions and discussed amendments that could allow mixed use projects (i.e. commercial with housing), and which could include senior living projects along Sepulveda Boulevard. You may wish to participate in Planning Commission and City Council hearings related to these future amendments, and we will do our best to inform you of any relevant topics. Currently, the Planning Commission is scheduled to conduct a public hearing on Sepulveda land uses on May 23, 2018. The matter will then be brought to the City Council on June 19 and July 3, 2018 for discussion and potential adoption.

Sincerely,



Anne McIntosh  
Director of Community Development



Ellen Berkowitz  
Tel 310.586.7763  
Fax 310.586.7800  
berkowitze@gtlaw.com

May 23, 2018

**VIA E-MAIL AND HAND DELIVERY**

The Honorable Planning Commission  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266  
PlanningCommission@citymb.info

Re: **Sunrise Senior Living Manhattan Beach: Appeal of City Inconsistency Determination**

Dear Honorable Commissioners:

This law firm represents Sunrise Senior Living (Sunrise), in connection with its Use Permit and Vesting Tentative Tract Map application (Application) filed on December 21, 2017 to construct a new 111-unit Sunrise Senior Living project (Project) at 250-400 N. Sepulveda Boulevard (Property) in the City of Manhattan Beach (City). On April 17, 2018, City staff advised Sunrise that the Application was complete.

Subsequently, on May 9, 2018, the Community Development Director (Director) issued an “inconsistency determination letter” (City Letter) which stated, among other things, that the Project is considered a residential senior housing use and not a “Residential Care, General” use. Accordingly, the City Letter advises that the Project is inconsistent with underlying General Commercial (GC) General Plan designation and the General Commercial (CG) zoning applicable to the Property, and the City staff therefore will not process the Application.

We disagree with the City Letter. The Project clearly qualifies as a “Residential Care, General” use, as such term is defined in the Manhattan Beach Municipal Code (MBMC or Code). Moreover, the City’s arguments to the contrary are conclusory and wholly unsupported. This letter, therefore, constitutes Sunrise’s formal appeal of the determination contained in the City Letter.

**I. Appeal Authority**

Pursuant to MBMC Section 10.08.010, the Director’s determination regarding a use classification may be appealed to the Planning Commission. Such appeal must be filed within 15 days of the determination date. (MBMC § 10.100.010.) The Director confirmed in an email dated May 14, 2018 that the City letter constituted a Director’s determination regarding a use

**EXHIBIT C  
PC MTG 06-13-18**

The Honorable Planning Commission  
City of Manhattan Beach  
May 23, 2018  
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classification that may be appealed to the Planning Commission. (See attached Exhibit 1.) Thus, this appeal is both appropriate and timely.

Confusingly, however, Manhattan Beach's City Attorney subsequently delivered an email on May 18, 2018 which stated, among other things, that the City Letter was not intended to be a determination of use, and that the Director made such determination of use "late last year or early January." (See attached Exhibit 2.) The City Attorney's email further agreed, however, to "toll the statutory appeal period with respect to the [City Letter's] determination until further notice."

For the record, while the Director has previously questioned how Sunrise's use should appropriately be classified within the City's zoning scheme, the Director never issued an official determination of use late last year or early January (or ever, for that matter, until now). The City Letter is the first determination letter Sunrise has ever received on this topic. In fact, the Director had previously represented to Sunrise that the City agreed with Sunrise's assessment that the proposed Project was a Residential Care, General use. (See attached Exhibit 3.)

Given the conflicting statements from the City, this appeal is being filed out of an abundance of caution in order to preserve Sunrise's rights. Moreover, Sunrise reserves the right to further supplement this letter with additional information for the Planning Commission's consideration.

## **II. The Project Qualifies as a Residential Care General Use**

MBMC Section 10.08.040(N) defines "Residential Care, General" as "**Twenty-four (24) hour non-medical care** for seven (7) or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance **essential for sustaining the activities of daily living**. This classification includes **only those services and facilities licensed by the State of California**." (emphasis added)

The Project fits precisely within this definition. As further described below, the Project provides non-medical care, on a twenty-four (24) hour basis, to more than seven (7) persons, in need of personal services, supervision, protection, and assistance with activities of daily living. Further, Sunrise facilities are licensed by the State of California as a **Residential Care** Facility for the Elderly (RCFE).

- **Sunrise provides 24-hour care for elderly persons in need of personal services, supervision, protection, or assistance essential for sustaining activities of daily living.** Sunrise is an integrated care-based facility that contains for-rent guest rooms, and that focuses on providing seniors with critical services that may include personalized elderly care and supportive 24-hour assistance for activities of daily living, Alzheimer's and memory care, dining/meals, and other personal care needs.

LA 133659923v1

- **Sunrise provides non-medical care.** RCFEs are not licensed as medical facilities and do not provide medical care. Specifically, persons who require 24-hour skilled nursing care or who have other serious health conditions are not permitted to live at RCFEs. Cal. Code of Regs. §§ 87455, 87615. Thus, RCFEs are not required to have nurses, certified nursing assistants or doctors on staff. However, residents needing specialized dementia services can be accepted and retained by RCFEs if certain requirements governing the “Care of Persons with Dementia” are met; the Project will meet these licensing requirements. Cal. Code of Regs. § 87705.
- **Sunrise is licensed by the State of California as a Residential Care Facility for the Elderly.** The Project will be licensed by the State of California as a RCFE pursuant to California Health & Safety Code Section 1569.20. Such facilities must meet specified care and safety standards set by the State Department of Social Services, Community Care Licensing Division, and contained in the California Code of Regulations, at Title 22, Division 6, Chapter 8. In general, RCFEs service individuals who require care and supervision because they are unable to live by themselves, but do not need 24-hour nursing care.<sup>1</sup>

### III. The City’s Assertions to the Contrary are Unsupported.

The City Letter makes the following unsupported assertions as its basis for determining that the Project is not considered a Residential Care, General use:

1. (p.1) “I was able to tour the entire facility and learn that it is the primary residence for the occupants. While they share meals and some residents receive care for certain physical or mental needs they may have, this is a residential "senior housing" project.”
2. (p.2) “This [Residential Care, General] classification is a Public and Semipublic use type that is intended primarily as a care facility, frequently for juvenile wards of the court or other individuals with issues such as addiction, to provide personal services, supervision, protection, or assistance. The residential component of residential care is secondary to the care. Participants in residential care facilities typically have other residences that serve as their primary residence. This definition does not, and is not intended to, cover senior living projects or senior residential housing like Sunrise.”

As detailed below, the City’s position is wholly unsupported.

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<sup>1</sup> State law defines RCFEs as “a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility...” (Cal. Health & Safety Code § 1569.2.)

- 1. City Statement: Under the “Residential Care, General” classification, the residential component is secondary to the care component of the use.**

**Sunrise Response:** This is an unsubstantiated opinion. The MBMC’s definition of “Residential Care, General” neither states nor implies that the residential component must be secondary to the care component. Notwithstanding, as described above, Sunrise is an integrated care-based residential care facility for the elderly that is licensed by the State. As a residential care facility, all of its residents receive some form of care. The provision of such care is by no means secondary; it is required by the State-issued RCFE license and fundamental to its operations.

- 2. City Statement: Participants in residential care facilities typically have other residences that serve as their primary residence.**

**Sunrise Response:** This is an unsubstantiated opinion. The MBMC’s definition of “Residential Care, General” neither states nor implies that occupants of residential care facilities must have other residences that serve as their primary residence. Moreover, “juvenile wards of the court,” which are expressly recognized as suitable tenants of “Residential Care, General” facilities, often do not have other residences that serve as their primary residence, as many have been removed from their homes because of abuse, neglect or behavioral issues. In any event, the City’s definition of a Residential Care, General use does not contain a length of stay requirement.

- 3. City Statement: The Project is a primary residence for occupants, and thus, it is considered a residential senior housing project. The definition of “Residential Care, General” does not, and is not intended to, cover residential senior housing projects like the proposed Project.**

**Sunrise Response:** This is wholly unsupported. As described above, the Project clearly qualifies as a Residential Care, General use under the MBMC. Further, as noted above, the MBMC’s definition of “Residential Care, General” neither states nor implies that occupants of residential care facilities must have other residences that serve as their primary residence, and the City does not cite to a single provision in the Code that would support its assertions. Moreover, there is nothing in the definition of “Residential Care, General” that states or implies that the definition was intended to exclude facilities for seniors. It is well-settled rule with significant precedent that courts will not insert terms or provisions of statutes which are obviously not there.

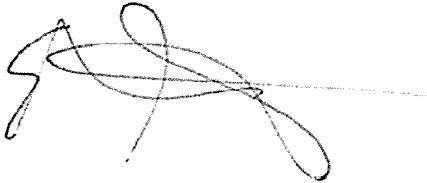
Lastly, the City Letter appears to imply that the Residential Care, General use is available only for juvenile wards of the court or similarly situated groups that require 24-hour residential care and not for senior citizens that require 24-hour residential care. Allowing juveniles requiring 24-hour residential care within the Residential Care, General definition, but disallowing the elderly requiring 24-hour residential care with that definition is discriminatory and constitutionally prohibited.

The Honorable Planning Commission  
City of Manhattan Beach  
May 23, 2018  
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As noted, we reserve the right to augment the record on appeal further, if necessary.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "Ellen Berkowitz", written over a horizontal dotted line.

Ellen Berkowitz  
Shareholder

EB:bm

cc: Anne McIntosh, Community Development Director, City of Manhattan Beach (via hand delivery)

Quinn Taylor, City Attorney, City of Manhattan Beach (via hand delivery)

Philip Kroskin, SVP Real Estate, Sunrise Senior Living (via e-mail)

LA 133659923v1

# **EXHIBIT 1**



## Khan, Roma (Secy-LA-LDZ-RE)

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**From:** Anne McIntosh <amcIntosh@citymb.info>  
**Sent:** Monday, May 14, 2018 4:04 PM  
**To:** Berkowitz, Ellen (Shld-LA-LDZ-RE)  
**Cc:** Hawner, Stephanie A. (Para-LA-LDZ-RE); Angela Reynolds  
**Subject:** RE: Sunrise Manhattan Beach land use determination letter

The answer to your question is "yes." Pursuant to Section 10.08.010, the Director's determination regarding a use classification may be appealed to the Planning Commission.

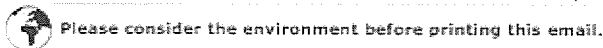
There is an appeal fee of \$500 if you want to pursue an appeal apart from the application review process itself. If you file an appeal, we will put the project on hold while the appeal is being scheduled/heard.

As I said in my previous email, we can continue processing the application when the reimbursement agreement and deposit is made, unless you file the appeal above.

Let me know if you have further questions.

Thanks

**Anne McIntosh**  
**Community Development Director**  
P: 310-802-5503  
E: [amcIntosh@citymb.info](mailto:amcIntosh@citymb.info)



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**From:** berkowitze@gtlaw.com <berkowitze@gtlaw.com>  
**Sent:** Monday, May 14, 2018 2:23 PM  
**To:** Anne McIntosh <amcIntosh@citymb.info>  
**Cc:** hawners@gtlaw.com  
**Subject:** RE: Sunrise Manhattan Beach land use determination letter

Thanks, Anne.

I note that Code Section 10.08.010 refers to the Community Development Director's determinations of use classifications, and notes that such decisions may be appealed

to the Planning Commission. Code Section 10.100.010 then sets for the process for appeals from decisions of the Community Development Director.

Is the letter you sent a “decision” on a use classification as referenced in Code Section 10.08.010, such that if we disagree with the decision, we should appeal it per the process set forth in Code Section 10.100.010? I want to make certain we are following the proper procedure.

Thanks again.  
Ellen

Ellen Berkowitz  
Shareholder  
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Suite 1900 | Los Angeles, CA 90067-2121  
Tel +1 310 586 7763 | Mobile + 1 310 592 3479  
[berkowitze@gtlaw.com](mailto:berkowitze@gtlaw.com) | [www.gtlaw.com](http://www.gtlaw.com)




**From:** Anne McIntosh [<mailto:amcIntosh@citymb.info>]  
**Sent:** Wednesday, May 9, 2018 4:27 PM  
**To:** Berkowitz, Ellen (Shld-LA-LDZ-RE) <[berkowitze@gtlaw.com](mailto:berkowitze@gtlaw.com)>  
**Cc:** Hawner, Stephanie A. (Para-LA-LDZ-RE) <[hawners@gtlaw.com](mailto:hawners@gtlaw.com)>  
**Subject:** Sunrise Manhattan Beach land use determination letter

Please see attached.

Upon receipt of a reimbursement agreement and deposit, we will continue to work with an environmental consultant to prepare the environmental review documents. If the City’s current discussion regarding uses on Sepulveda does not result in the addition of residential housing or senior housing, you would need to apply for a General Plan Amendment and Zoning Amendment to proceed.

**Anne McIntosh**  
**Community Development Director**  
P: 310-802-5503  
E: [amcIntosh@citymb.info](mailto:amcIntosh@citymb.info)



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## **EXHIBIT 2**

**Berkowitz, Ellen (Shld-LA-LDZ-RE)**

---

**From:** Quinn M. Barrow <QBarrow@rwglaw.com>  
**Sent:** Friday, May 18, 2018 3:49 PM  
**To:** Berkowitz, Ellen (Shld-LA-LDZ-RE)  
**Subject:** Sunrise Assisted Care Facility Project, proposed for 250-400 North Sepulveda

Ellen:

Good afternoon. I am still out of town, but I wanted to get back to you today. (Also, the Manhattan Beach Municipal Code appears to be off-line at the moment, so I cannot access it.)

As a follow up to our discussion on Tuesday, I provide the following information:

By letter ("Letter") dated May 9, 2018, Manhattan Beach Community Development Director Anne McIntosh determined that, pursuant to Government Code Section 65589.59(j)(2), your client's proposed Sunrise Assisted Living Project ("Project") is inconsistent with applicable zoning and the City's General Plan designation because the Project is proposed for a site with a commercial zoning classification and a commercial General Plan designation.

In conversations with Ms. McIntosh and me, you have queried whether the Letter constitutes the Director's "determination of use" which can be appealed pursuant to the Zoning Code. The Letter is not intended to be a determination of use. The Director made that determination late last year or early January. Once again, the Letter constitutes an inconsistency determination pursuant to Section 65589.5(j)(2), which, as indicated in the Letter, may or may not apply to the Project due to the timing of the filing of your application. Nevertheless, in the spirit of cooperation, we are comfortable in agreeing to a tolling of the statutory period applicable to any appeal rights you may have with respect to the Letter.

Accordingly, the City hereby tolls the statutory appeal period with respect to the Letter's determination until further notice. In the event the City intends to lift the toll, it will provide you with 20 days written notice, which will

provide you with ample time to consider your options, including filing an appeal of the determination.

Quinn

Sent from my iPad

On May 17, 2018, at 2:30 PM, Quinn M. Barrow <QBarrow@rwglaw.com<mailto:QBarrow@rwglaw.com>> wrote:

Ellen: I'm out of town, but I intend to send you an email tomorrow. In essence, I would like to offer you a tolling agreement to preserve your rights, if any, to appeal the letter. More tomorrow.

Sent from my iPhone

On May 17, 2018, at 12:10 PM,  
"berkowitze@gtlaw.com<mailto:berkowitze@gtlaw.com>"  
<berkowitze@gtlaw.com<mailto:berkowitze@gtlaw.com>> wrote:

Ellen Berkowitz  
Shareholder

Greenberg Traurig, LLP | 1840 Century Park East Suite 1900 | Los Angeles, CA 90067-2121 Tel +1 310 586 7763 | Mobile + 1 310 592 3479  
berkowitze@gtlaw.com <mailto:berkowitze@gtlaw.com> | www.gtlaw.com  
<<http://www.gtlaw.com/>>

<image001.png>

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# **EXHIBIT 3**

## Berkowitz, Ellen (Shld-LA-LDZ-RE)

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**From:** Anne McIntosh <amcIntosh@citymb.info>  
**Sent:** Tuesday, September 26, 2017 12:11 PM  
**To:** Berkowitz, Ellen (Shld-LA-LDZ-RE)  
**Subject:** RE: New Contact Info

Hi Ellen, I was just thinking about you. Thanks for the contact info. I hope this is an exciting new venture for you!

I have assumed that Sunrise is planning to submit a Use Permit application. We have not resolved the bonus height issue. You have contended that a 10 foot height bonus should be granted for senior housing, and I contended that this is a Residential Care use and not Housing, as we don't permit housing in the CG zone. If you can make a legal argument about the height bonus, we will accept your application and consider it.

I also think you should expect to prepare an EIR. Land Use and Aesthetics. VMT under 743 will help you, but I can't see Cat Ex on this and Mitigated neg dec is not a term we can use anymore.

I will be out the rest of the week after today. Maybe we can talk early next week.

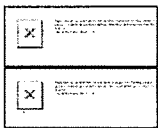
Thx,  
Anne

**Anne McIntosh**  
**Community Development Director**  
P: 310-802-5503  
E: [amcIntosh@citymb.info](mailto:amcIntosh@citymb.info)



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**From:** [berkowitze@gtlaw.com](mailto:berkowitze@gtlaw.com) [mailto:[berkowitze@gtlaw.com](mailto:berkowitze@gtlaw.com)]  
**Sent:** Tuesday, September 26, 2017 10:21 AM  
**To:** Anne McIntosh <amcIntosh@citymb.info>  
**Subject:** New Contact Info

Hi Anne –

Just wanted to make sure you had my new contact info. I left a message for you on your cell phone with my new number, as well. Wanted to catch up on next steps for Sunrise.

Speak with you soon.  
Thanks.

Ellen

Ellen Berkowitz  
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