

CITY OF BELVEDERE

RESOLUTION NO. 2024-09

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE AFFIRMING
CONSTRUCTION TIME LIMIT
PENALTY RECOMMENDATION FOR 22-26 BEACH ROAD**

WHEREAS, Belvedere Land Company is the owner of real property located at 22-26 Beach Road in Belvedere; and

WHEREAS, in 2021, the Building Department issued a building permit to begin roof and railing, and window and door replacement at 22-26 Beach Road with an 18-month Construction Time Limit ("CTL"), which expired April 28, 2023; and

WHEREAS, on April 11, 2023, City staff approved a six-month CTL extension based on construction related delays due to additional unforeseen structural improvements on the structure, setting a new CTL deadline of October 28, 2023; and

WHEREAS, the project exceeded its CTL deadline by 12 days with a corresponding CTL penalty of \$7,200; and

WHEREAS, the applicant appealed the CTL penalty that was heard by the CTL Appeals Committee on April 11, 2023; and

WHEREAS, Belvedere Municipal Code section 20.04.035(F)(4) provides that the City Council may reduce a CTL penalty if the time limit was exceeded for reasons beyond the applicant's control which include, but are not limited to, extreme weather events, labor stoppages, and natural disasters; and

WHEREAS, on March 11, 2024, the City Council held a duly noticed public hearing regarding the CTL penalty and determined that the construction delay was not caused due to reasons beyond the applicant's control in that:

- staff adequately addressed the project's unforeseen need for structural upgrades by previously granting a six-month extension, and no further extension is necessary; and
- the project applicant should have been well-aware of the Planning Department's requirements, and any delay due to the applicant's need for a design review exemption with respect to proposed lighting was not due to reasons beyond the applicant's control; and

WHEREAS, based on substantial evidence in the record including testimony presented at the hearing, the City Council therefore voted to affirm the assessed CTL penalty of \$7,200; and

WHEREAS, the City's decision is not subject to the California Environmental Quality Act ("CEQA") as the CTL penalty reduction does not constitute a "project" subject to CEQA analysis; and

WHEREAS, the City Clerk notified the applicant that its appeal would be heard by the City Council at its regular March 11, 2024 meeting, City staff made several attempts before and during the City Council meeting to determine whether the applicant would attend, and notwithstanding these notifications, the applicant did not attend or send any representative to the City Council meeting; and

NOW, THEREFORE, BE IT RESOLVED that:

1. Pursuant to Belvedere Municipal Code section 20.04.035(F) and based on substantial evidence in the record and based on the findings set forth above incorporated herein,

the City Council of the City of Belvedere affirms and adopts staff's recommendation to uphold the assessed CTL penalty of \$7,200.

2. The property owner shall hold the City of Belvedere and its officers, employees, volunteers, and any similarly situated persons, harmless in the event of any legal action, claim, or dispute related to or arising from this Resolution, shall cooperate with the City in the defense of any such action with counsel selected by the City in its sole discretion, and shall fully indemnify the City for any award of damages and/or attorneys' fees and associated costs that may result.

PASSED AND ADOPTED at a regular meeting of the Belvedere City Council on March 11, 2024, by the following vote:

AYES: Cooper, Lynch, Wilkinson, Mark
NOES: None
ABSENT: Kemnitzer
ABSTAIN: None

ATTEST: Beth Haener
Beth Haener, City Clerk

APPROVED: Peter Mark
Peter Mark, Mayor