

Division 6: Land Use and Zoning Related Provisions

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Chapter 9.53 Transportation Demand Management

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9.53.010 Purpose

The purpose and objective of this Chapter is to implement the goals and policies of the City's General Plan by proactively managing congestion, reducing automobile dependence and enhancing transportation choices by requiring trip reduction plans for all types of trips – work, shopping, leisure, school, and appointments – that will:

- A. Ensure City compliance with the applicable requirements of the South Coast Air Quality Management District (SCAQMD) Rule 2202 and implement air quality control measures required of local governments by the District's 1991 Air Quality Management Plan and subsequent updates and the Los Angeles County Metropolitan Transportation Authority's (MTA) Congestion Management Program (CMP);
- B. Accommodate land use changes allowed under the General Plan's Land Use and Circulation Element ("LUCE") while reducing peak-hour automobile trips from new and existing destinations to achieve the LUCE's goal of no net increase in PM peak hour vehicle trips by 2030;
- C. Improve the mobility and general efficiency of circulation and transportation systems by increasing reliance on public transit, ridesharing, walking, carsharing, cycling and focusing development in areas close to transit and employment;
- D. Reduce traffic impacts within the community and region, vehicular air pollutant emissions, energy usage, and ambient noise levels through a reduction in the number of per capita vehicle miles traveled and management of traffic congestion;

- E. Minimize the percentage of employees traveling in single-occupant vehicles to and from work, especially during peak-hour periods;
- F. Promote and increase work-related transit use, ridesharing, walking and bicycling to minimize parking needs, manage congestion, and protect the quality of life in Santa Monica's neighborhoods and districts;
- G. Improve the quality and level of access for residents, employees, customers, and visitors by improving transportation choices and managing congestion;
- H. Decrease the City's need for additional parking facility construction;
- I. Coordinate transportation system management, transportation demand management, and transportation facility development strategies Citywide;
- J. Coordinate transportation system management, transportation demand management, and transportation facility development strategies with other cities and counties in the region and through regional agencies;
- K. Prior to January 1, 2016, strive to achieve a City-wide average vehicle ridership of 1.5 or better among employers of fifty employees or more, in accordance with LUCE trip reduction goals; and
- L. On and after January 1, 2016, strive to achieve the average vehicle ridership targets in this Chapter or better among employers of thirty or more employees and developers, in accordance with LUCE trip reduction goals.

9.53.020 Definitions

The following words and phrases shall have the following meanings when used in this Chapter:

- A. **Audit.** A selective inspection by the City of an employer's activities related to the fulfillment of ongoing implementation and monitoring of an approved emission reduction plan.
- B. **Average Vehicle Ridership (AVR).** The total number of employees who report to or leave the worksite or another job-related activity during the peak periods divided by the number of vehicles driven by these employees over that five-day survey period. The AVR calculation requires that the five-day period must represent the five days during which the majority of employees are scheduled to arrive at the worksite. The hours and days chosen must be consecutive. The five-day survey period cannot contain a holiday and shall represent typical operations so that a projection of the average vehicle ridership during the year is obtained.

An example of morning AVR using the survey week for an employer with three hundred employees all reporting to work weekdays between six a.m. and ten a.m. is:

	EMPLOYEES REPORTING TO WORK	NUMBER OF VEHICLES DRIVEN TO THE WORKSITE BY THESE EMPLOYEES
MONDAY	300	200
TUESDAY	300	190
WEDNESDAY	300	210
THURSDAY	300	200
FRIDAY	300	200
TOTAL	1500	1,000

In this example, AVR is arrived at by dividing the number of employees reporting to work between six a.m. and ten a.m. during the survey week (one thousand five hundred) by the number of vehicles driven to the worksite between the same hours during the week (one thousand):

$$1500/1000 = 1.5 \text{ AVR}$$

A similar calculation is required for obtaining the afternoon peak period AVR for commute trips to and from the worksite between three p.m. and seven p.m.

- C. **AVR Target.** The AVR established by this Chapter that an Employer Emission Reduction Plan (ERP) or Developer Transportation Demand Management (TDM) plan is expected to achieve for a particular worksite or project.
- D. **AVR Verification Method.** A method approved by the City for determining an employer’s current AVR, or approved by the City or SCAQMD for employers of two hundred fifty employees or more.
- E. **AVR Window.** The period of time comprised of both hours and days used to calculate AVR (i.e., six a.m. to ten a.m. and three p.m. to seven p.m.).
- F. **Carpool.** A motor vehicle occupied by two to six persons traveling together to and from the worksite for the majority (at least fifty-one percent) of the total commute.
- G. **Commute Trip.** A home-to-work or work-to-home trip.
- H. **Compressed Work Week.** This applies to employee(s) who, as an alternative to completing the basic work requirements in five eight-hour workdays in one week are scheduled in a manner which reduces vehicle trips to the worksite. The recognized compressed work week schedules for purposes of Chapter 9.53 of the Municipal Code are thirty-six hours in three days (3/36), forty hours in four days (4/40), or eighty hours in nine days (9/80).
- I. **Consultant Employee Transportation Coordinator(ETC).** A person that meets the requirements of and that serves as an ETC at a single worksite for an employer other than the consultant ETC’s employer.
- J. **Developer.** Any person or entity that is responsible for development of a project that has not yet received its final approval as of the effective date of this Chapter that will result in the construction of 7,500 square feet of floor area or more, 16 residential units or more, or mixed-use projects of 16

residential units or more with any associated non-residential components. The person or entity responsible for development of a project shall be the developer and property owner. Upon transfer of title from a Property Owner to a Developer, the term “developer” shall mean the Property Owner.

- K. **Developer TDM Plan.** A trip reduction plan intended to result in a developer achieving the applicable AVR Targets specified in this Chapter.
- L. **Disabled Employee.** An individual with a physical or mental impairment which prevents the individual from traveling to and from the worksite by means other than a single-occupant vehicle.
- M. **Emission Reduction Plan (ERP).** A plan intended to reduce emissions related to employee commutes and to meet a worksite specific emission reduction target for the subsequent year.
- N. **Emission Reduction Plan Appeals Board (ERP Appeals Board).** The administrative review body for decisions of the City staff. The ERP Appeals Board shall consist of the Transportation Demand Program Manager, Director of Planning and Community Development and an at-large member appointed by the City Council. The Transportation Demand Program Manager and the Director of Planning and Community Development may designate an employee from his or her division or department as his or her representative.
- O. **Emission Reduction Target (ERT).** The annual VOC, NO_x and CO emissions required to be reduced based on the number of employees per worksite and the employee emission reduction factors (pounds per year per employee) specified in SCAQMD Rule 2202-On-Road Motor Vehicle Mitigation Options Implementation Guidelines.
- P. **Employee.** Any person employed full or part-time by a person(s), firm, business, educational institution, nonprofit agency or corporation, government agency or other entity. This term excludes the following: temporary employees, field construction workers, independent contractors, volunteers, seasonal employees and field personnel.
- Q. **Employee Transportation Coordinator (ETC).** The designated person, with appropriate training as required by the City, who is responsible for the development, administration, implementation and monitoring of the Emission Reduction Plan. The ETC must be at the worksite during normal business hours when the majority of employees are at the worksite. Employers of two hundred fifty employees or more must attend an SCAQMD ETC certification course. Employee Transportation Coordinators shall participate in City-sponsored workshops and roundtables.
- R. **Employee Trip Reduction Plan (ETRP).** A plan for implementation of strategies that are designed to reduce employee vehicle commute trips during the AVR Window.
- S. **Employer.** Any public or private employer, including the City of Santa Monica, having a permanent place of business in the City and employing ten or more employees.
- T. **Field Construction Worker.** An employee who reports directly to work at a construction site outside the City of Santa Monica for the entire day, an average of at least six months out of the year.
- U. **Field Personnel.** An employee who spends twenty percent or less of their work time, per week, at the worksite and who does not report to the worksite during peak periods for pick up and dispatch of an employer provided vehicle.
- V. **Fleet Vehicles.** Any vehicles, including passenger cars, light-duty trucks and medium duty on-road vehicles, owned or leased by an employer that totals four (4) or more vehicles.

- W. **Holiday.** Those days designated as national or State holidays, in which the worksite is closed in observance of the holiday. An AVR survey shall not be undertaken in any week where the following holidays occur:

New Year's Day	January 1
Martin Luther King Jr. Birthday	January (Third Monday)
Presidents' Day	February (Third Monday)
Memorial Day	May (Last Monday)
Independence Day	July 4
Labor Day	September (First Monday)
Columbus Day	October (Second Monday)
California Rideshare Week	October (First Week)
Veteran's Day	November 11
Thanksgiving Day	November (Fourth Thursday plus the Friday after)
Christmas Eve	December 24
Christmas Day	December 25

The days these holidays are observed may vary from year to year; therefore it shall be the responsibility of the employer to obtain these specific holiday dates to ensure exclusion of these weeks from their AVR survey week. Additionally, the employer may not survey on any week in which a religious or other holiday not listed above is observed by the employer, resulting in closing the place of employment for one day or more in observance of said holiday.

- X. **Independent Contractor.** A person who enters into a direct written contract or agreement with an employer to perform certain services and is not on the employer's payroll. An Independent Contractor providing services to an employer for a consecutive period of more than six months shall count as an employee of the employer and shall be counted in the AVR. The Independent Contractor shall also be considered an employee when figuring the employer annual transportation fee.
- Y. **Low-Income Employee.** An individual whose salary is equal to or less than the current individual income level set in California Code of Regulations, Title 25, Section 6932, as lower income for Los Angeles County. Higher income employees may be considered to be "low-income" if the employee demonstrates that the plan disincentive would create a substantial economic burden.

- Z. **Monitoring.** The techniques used to assess progress towards complying with the transportation management plan.
- AA. **Multi-Site Employer.** Any employer which has more than one worksite within the City of Santa Monica, or more than one worksite in the South Coast Air Basin with one or more of those sites located in the City of Santa Monica.
- BB. **Multi-Tenant Worksite.** A structure, or group of structures, on one worksite where more than one employer conducts a business.
- CC. **Non-Commuting AVR Credit.** This credit applies to employees who arrive at the worksite during the window for calculating AVR and remain at the worksite or out of the SCAQMD jurisdiction for a full 24 hour period or more to complete work assignments.
- DD. **On-Site Coordinator.** An employee who serves as on-site coordinator at a worksite served by a consultant ETC or for an employer with more than one worksite located in the City of Santa Monica and has knowledge of the employer's ERP and marketing. On-Site Coordinators for employers with more than two hundred fifty employees must attend a one-time SCAQMD certified training course. The On-Site Coordinator is limited to program implementation rather than program development.
- EE. **Parking Cash Out.** Health and Safety Section 43845 that requires employers with fifty or more employees who lease their parking and subsidize all or part of that parking to implement a parking cash-out program. Employers who fall under the purview of parking cash out must offer their employees the option to give up their parking spaces and receive a cash subsidy in an amount equal to the cost of the parking space. Employers who are subject to parking cash out requirements must implement a parking cash out plan. Employers who do not implement a parking cash out plan will have their emission reduction plans disapproved.
- FF. **Part-Time Employee.** Any employee who reports to a worksite on a part-time basis fewer than thirty-two hours per week but more than four hours per week. These employees shall be included in the AVR calculations of the employer provided the employees report to or leave the worksite during the AVR window.
- GG. **Peak Period.** In the morning, the peak period includes the hours from six a.m. to ten a.m. In the evening, the peak period includes the hours from three p.m. to seven p.m.
- HH. **Peak Period Trip.** An employee's commute trip that begins or ends at the worksite or a work related trip within the peak period.
- II. **Performance Target Zone.** A geographic area that determines the minimum employee emission reduction factor for a particular worksite determined by the SCAQMD. Santa Monica is located in SCAQMD Zone 2.
- JJ. **Planning Director.** The Director of Planning and Community Development of the City of Santa Monica or his/her designee.
- KK. **Project Commute Survey.** A survey of all tenant employees of a project site to determine property-wide AVR as part of the annual monitoring report on a Developer TDM Plan.
- LL. **Project Transportation Coordinator (PTC).** The designated person, with appropriate training as required by the City, who is responsible for the development, administration, implementation, and monitoring of the Developer TDM Plan. The PTC must be at the project site during normal business hours when the majority of employees are at the project unless alternative arrangements have been made pursuant to Section 9.53.150. PTCs shall participate in City-sponsored workshops and roundtables.

- MM. **Property Owner.** Any person, co-partnership, association, corporation or fiduciary having legal or equitable title or any interest in any real property.
- NN. **Ridesharing.** Any mode of transportation other than a single occupancy vehicle that transports one or more persons to a worksite.
- OO. **Seasonal Employee.** Any person who is employed for less than a continuous 90-day period.
- PP. **Single Occupancy Vehicle.** A privately operated motor vehicle whose only occupant is the driver, including for hire vehicles with one passenger.
- QQ. **South Coast Air Quality Management District (SCAQMD).** The air quality control agency that monitors and enforces air quality regulations in Orange County and non-desert portions of Los Angeles, Riverside and San Bernardino Counties.
- RR. **Student Worker.** A student who is enrolled and gainfully employed (on the payroll) by an educational institution. Student workers who work more than four hours per week are counted for ordinance applicability and if they report to or leave work during the AVR Window(s) are counted for AVR calculation. Student workers are Employees within the meaning of this Chapter.
- SS. **Telecommuting.** Any employee(s) working at home, off-site, or at a telecommuting center for a full work day, eliminating the trip to work or reducing travel distance by more than fifty percent.
- TT. **Temporary Employee.** Any person employed by an employment service or a “leased” employee that reports to a worksite other than the employment service’s worksite, under a contractual arrangement with a temporary employer. Temporary employees are counted as employees of the employment service for purposes of calculating AVR. Temporary employees reporting to the worksite of a temporary employer for a consecutive period of more than six months shall count as an employee of the temporary employer and shall be counted in the AVR. The temporary employee shall also be considered an employee when figuring the employer annual transportation fee.
- UU. **Training Provider.** A person, firm, business, educational institution, nonprofit agency or corporation or other entity which meets the requirements of and is certified by the South Coast Air Quality Management District and the City of Santa Monica to provide training, as required by this Chapter, to Employee Transportation Coordinators (ETC)s.
- VV. **Transit.** A shared passenger transportation service which is available for use by the general public, as distinct from modes such as taxicabs, carpools, or vanpools which are not shared by strangers without a private arrangement. Transit includes buses, ferries, trams, trains, rail, or other conveyance which provides to the general public a service on a regular and continuing basis. Also known as public transportation, public transit or mass transit.
- WW. **Transportation Allowance.** A financial incentive offered to employees instead of a parking subsidy to provide employees flexibility in mode choice. Employees are typically required to execute an agreement that they do not commute in a single-occupant vehicle in order to be eligible to receive the benefit.
- XX. **Transportation Demand Management (TDM).** The implementation of strategies that will encourage individuals to either change their mode of travel to other than a single occupancy vehicle, reduce trip length, eliminate the trip altogether, or commute at other than peak periods.
- YY. **Transportation Facility Development (TFD).** Construction of capital improvements to a transportation or transit system and/or installation of related operating equipment.

- ZZ. **Transportation Management Organization (TMO).** Transportation Management Organizations (TMOs) are City-certified organizations that provide transportation services in a particular area or citywide. They are generally public-private partnerships, consisting primarily of area businesses with local government support. TMOs provide an institutional framework for TDM programs and services.
- AAA. **Transportation System Management (TSM).** Strategies designed to improve traffic flow through modifications in, or coordination of, the operation of existing facilities.
- BBB. **Trip Reduction.** The reduction in single occupant vehicle trips by private or public sector programs used during peak periods of commuting.
- CCC. **Vanpool.** A van or similar motor vehicle in which seven to fifteen persons commute to and from the worksite for the majority (at least fifty-one percent) of the commute trip.
- DDD. **Vehicle.** Any passenger car or truck, including Zero Emission Vehicles (ZEVs), used for commute purposes including any motorized two-wheeled vehicle. Vehicles shall not include bicycles, transit services, buses serving multiple worksites, or vehicles that stop only to load or unload passengers or materials at a worksite while on route to other worksites.
- EEE. **Vehicle Trip.** The means of transportation used for the greatest distance of an employee's commute to or from work during the peak period. Each vehicle trip to the worksite shall be calculated as follows:

Single-occupant vehicle = 1

Carpool = 1 divided by the number of people in the carpool

Vanpool = 1 divided by the number of people in the van

Motorcycle, moped, motorized scooter, motorbike = 1 divided by the number of people on the vehicle

Zero Emission Vehicle = 0*

(*Zero Emission Vehicle = 1 for Developer TDM Plans. See Section 9.53.140)

Public transit = 0

Bicycle = 0

Walking and other non-motorized transportation modes = 0

Non-commuting = 0

Telecommuting = 0 on days employee is telecommuting for the entire day

Compressed Work Week = 0 on employee's compressed day(s) off

- FFF. **Volunteer.** Any person at a worksite who, of their own free will, provides goods or services, without any financial gain.
- GGG. **Workplace or Worksite.** A building, part of a building, or grouping of buildings located within the City which are in actual physical contact or separated solely by a private or public roadway, and are

owned or operated by the same employer. Structures that are located more than one-half mile away from each other must have a certified ETC or on-site coordinator at each site.

HHH. **Worksite Transportation Plan (WTP).** A plan for implementation of marketing strategies designed to provide employees with information about alternative commute options.

III. **Zero Emission Vehicle (ZEV).** A motor vehicle, as certified by the California Air Resources Board (CARB), which emits no tailpipe pollutants. Employees arriving to work in a Plug-In Hybrid Electric Vehicle (PHEV) meet the definition of a zero emission vehicle provided that the entire trip to work is made exclusively under electric power. This applies to plug-in vehicles with all electric range that can travel exclusively under electric power without use of the gasoline engine or cogeneration system.

9.53.030 Applicability

This Chapter shall apply to Employers and Developers as defined above. The City shall not be exempt from the requirements of this Chapter. In accordance with the Memorandum of Understanding between the City and the SCAQMD, government agencies located in Santa Monica shall be exempt from this Chapter.

9.53.040 AVR Targets

Prior to January 1, 2016, Employers shall strive to achieve and Developers shall achieve an AVR of 1.5. On and after January 1, 2016, Employers shall strive to achieve and Developers shall achieve the applicable AVR Targets in this Chapter. This Section shall not apply to residential units but shall apply to non-residential components of mixed-use projects. For non-residential uses in residential designations not represented in this Chapter, all Employers shall achieve the lowest AVR Targets established by this Chapter unless located in a land use designation with a higher AVR Target.

Table 9.53.040: AVR Targets by District

LAND USE DESIGNATION	EMPLOYER AND DEVELOPER AVR TARGET
Mixed Use Boulevard: northside of Wilshire Boulevard from Lincoln Boulevard to eastern City Limits, and southside of Wilshire Boulevard from Lincoln Court to eastern City Limits	1.75
Mixed Use Boulevard: 4 th Street from Olympic Drive to Pico Boulevard and area bounded by Cloverfield Boulevard, Olympic Boulevard, 20 th Street and Colorado Avenue	2.0
Mixed Use Boulevard: Wilshire Boulevard from 2 nd Court to 7 th Street, and Lincoln Boulevard from Wilshire Boulevard to Olympic Boulevard	2.2
Mixed Use Boulevard Low: Pico Boulevard from Main Court to Centinela Avenue, Lincoln Boulevard from Santa Monica Freeway to Bay Street, Main Street from Pico Boulevard to southern City Limits	1.75
Mixed Use Boulevard Low: Santa Monica Boulevard from 23 rd Street to Centinela Avenue, Broadway from Lincoln Court to 26 th Street, Colorado Avenue from Lincoln Court to Cloverfield Boulevard, Olympic Boulevard from Euclid Court to 17 th Street	2.0
Bergamot Transit Village; Mixed Use Creative; Conservation: Art Center; Conservation: Creative Sector	2.0

LAND USE DESIGNATION	EMPLOYER AND DEVELOPER AVR TARGET
Downtown Core	2.2
General Commercial: Pico Boulevard from Lincoln Boulevard to 11 th Street, Lincoln Boulevard from Santa Monica Freeway to Bay Street	1.75
General Commercial: Santa Monica Boulevard from Lincoln Court to 20 th Street	2.0
Industrial Conservation: Euclid Court to Stewart Street	2.0
Neighborhood Commercial: Pico Boulevard from Main Court to Centinela Avenue	1.75
Neighborhood Commercial: Olympic Boulevard from 14 th Street to 16 th Street	2.0
Office Campus: south of Ocean Park Boulevard	1.75
Office Campus: east of Cloverfield Boulevard, north of Olympic Boulevard	2.0
Oceanfront District, north of Santa Monica Pier	1.75
Ocean Front District, Santa Monica Pier and south	2.0
Healthcare Mixed Use	2.0
Institutional/Public Lands: bounded by Pico Boulevard, 20 th Street, Pearl Street and 16 th Street	1.75
Institutional/Public Lands: bounded by Santa Monica Freeway, Lincoln Boulevard, Pico Boulevard and Ocean Avenue	2.2
Institutional/Public Lands: other than specified above	1.6
All remaining districts	1.6

9.53.050 Employer Transportation Fee

- A. **Employer Annual Transportation Fee.** There shall be an employer annual transportation fee. All employer annual transportation fees collected pursuant to this Chapter shall be deposited in an account separate from the General Fund. The purpose of the employer annual transportation fee is to pay for the costs of administration, including TDM outreach and support and City TMO formation activities, implementation, investigation, inspection, audit, and enforcement of this Chapter.
1. Employers filing Emission Reduction Plans (ERPs) or Worksite Transportation Plans (WTPs) shall pay an annual transportation fee calculated using the following formula: Fee = (number of employees) x (employee cost factor). The employee cost factor shall be established by resolution of the City Council and amended each July according to the Consumer Price Index or COLA, whichever is higher or by the resolution of the City Council.
 2. For purposes of calculating an employer's annual transportation fee, the definition of employee shall include full-time and part-time employees. For purposes of calculating an employer's annual transportation fee, the definition of an employee working at a worksite for an average of six months or more shall be used.
 3. Employers shall be notified of the employer annual transportation fee when they receive written notice to submit an ERP or WTP in accordance with this Chapter. Employer annual transportation fees shall be due and paid in full with the submittal of the ERP or WTP. The

City shall provide written notice of payment required by this subsection at least ninety calendar days prior to the due date.

4. Once the employer annual transportation fee required pursuant to this Chapter has been paid, there shall be no refunds.
5. Employers of fifty or more employees, or thirty or more employees on and after January 1, 2016, who implement an employee trip reduction plan and demonstrate attainment of the applicable AVR Target shall receive the following reductions in their employer annual transportation fees:
 - a. Attainment of the applicable AVR Target for one year shall result in a forty percent reduction of employer annual transportation fees.
 - b. Attainment of the applicable AVR Target for two consecutive years shall result in a fifty percent reduction of employer annual transportation fees.
 - c. Attainment of the applicable AVR Target for a period of three or more consecutive years shall result in a sixty percent reduction of employer annual transportation fees.
6. Employers of fifty or more employees who join a TMO certified by the City, through the procedures specified in this Chapter, shall receive a twenty-five percent reduction in the annual employer transportation fee. This reduction shall be in addition to any fee reduction the employer is awarded for attainment of the applicable AVR Target. Fees charged by the TMO to employers for its operation and administrative costs shall be separate from the City's employer transportation fee. On and after January 1, 2016, this fee discount shall apply to employers of 30 or more employees who join a TMO certified by the City through the procedures specified in this Chapter.

9.53.060 Contents of Emission Reduction Plans

- A. Employers of fifty or more employees are required to submit to the City, within ninety calendar days of written notification, an Emission Reduction Plan (ERP) designed to reduce emissions related to employee commute trips and to meet specific emissions reduction targets specified for the subsequent year. The annual Emission Reduction Target (ERT) shall be the equivalent of the highest AVR Target in the City and shall be determined according to the SCAQMD's equation for VOC NOx and CO, based on employee emission reduction factors specified in Chapter V of the SCAQMD Rule 2202 Implementation Guidelines. Any employer subject to Health and Safety Section 43845 shall implement a parking cash out program. Failure to do so will result in the disapproval of an employer's ERP. On and after January 1, 2016, all employers of 30 or more employees shall be required to submit an emission reduction plan to the City annually.

[Emission Reduction Target] = [Employees x Employee Emission Reduction Factor]

For purposes of this calculation:

Employee = Average daily number of employees reporting to work in the AVR window for a typical five day work period which does not include those days defined as holidays.

Employee emission reduction factor = Determined by the year of the plan submittal as defined in Chapter V of the SCQAMD Rule 2202 Implementation Guidelines.

Vehicle trip emission credits = Determined according to Chapter V of the SCQAMD Rule 2202 Implementation Guidelines. The employer's emission reductions can be further reduced through generation of Vehicle Trip Emission Credits (VTECs) from the implementation of optional trip reduction strategies. These VTECs, obtained through peak and off-peak commute trip reductions and other work-related reductions can be applied towards meeting an employer's Emission Reduction Target (ERT). Credit for any program must go beyond the requirements of existing State and Federal programs to avoid "double counting" the emission reductions. All emission credits are valid according to the conditions, guidelines or regulations under which they were originally issued.

1. Each employer shall choose one or more of the following options in implementing their Emissions Reduction Plan:
 - a. Purchase of Mobile Source Emission Reduction Credits (MSERCs).
 - b. Employee Trip Reduction Plan.

B. Options For Implementing Emissions Reduction Plan

1. **Mobile Source Emission Reduction Credits (MSERCs).** In order to meet their Emission Reduction Target, any employer required to submit an ERP may purchase MSERCs from a vendor based on emission reduction factors as determined by Section 9.53.060(H). A list of credit vendors can be found on the SCAQMD's website.
 - a. An annual plan indicating the amount of credits purchased and the amount of emissions reduced must be submitted to the City each year.
 - b. MSERCs must be transferred to the City MSERC account no later than one hundred eighty calendar days after the approval of the ERP by the City.
2. **Employee Trip Reduction Plan.** Employers who choose this option shall prepare, implement and monitor Employee Trip Reduction Plans (ETRP) for transportation demand management, transportation system management and transportation facility development which will be reasonably likely to result in the attainment of the applicable AVR Target in this Chapter. The ETRP shall be submitted in a form approved by the City and shall be reviewed and approved by the Planning Director before it is effective.
 - a. The ETRP shall include strategies designed to encourage employees to rideshare during the morning and evening AVR windows and shall be made available to all employees upon hire and every year thereafter along with the employer's most recent ETRP annual report.
 - b. The ETRP shall consist of a report that:
 - i. Calculates and documents AVR levels for morning and evening peak periods;
 - ii. Lists plan incentives and a schedule for their implementation, including a mandatory guaranteed ride home program which provides an employee who rideshares a ride home in the event of an emergency or unplanned overtime with no cost to the employee;
 - iii. Determines a marketing strategy for the plan year, including mandatory new hire orientation which informs employees of the employer's ERP strategies at the time of hire, or new employee orientation;

- iv. Determines the use of worksite parking facilities to achieve rideshare and transit objectives (i.e., number of reserved spaces for carpools, vanpool, etc.);
 - v. Lists the bicycle paths, routes, and facilities within one-half mile of the worksite;
 - vi. Lists the public transit services within one half mile of the worksite;
 - vii. Provides a general description of the type of business;
 - viii. Includes a sample of the employee AVR survey, or other mechanism approved by the City. This survey must not be more than six months old. For employers with two hundred fifty or more employees, the survey must conform with SCAQMD requirements. The survey must be taken over five consecutive days during which the majority of employees are scheduled to arrive at or leave the worksite. The survey week cannot contain a holiday and cannot occur during “Rideshare Week” or other “event” weeks (i.e., Bicycle Week, Walk to Work Week, Transit Week, etc.). This survey must have a minimum response rate of seventy-five percent of employees who report to or leave work between six a.m. and ten a.m., inclusive, and seventy five percent response rate for employees who report to or leave work between three p.m. and seven p.m., inclusive. Employers that achieve a 90% or better survey response rate for the a.m. or p.m. window may count the “no survey responses” as “other” when calculating their AVR. Employers that receive a survey response rate between 75% and 89% shall calculate the “no survey response” as “drive alone” when calculating their AVR;
 - ix. Provides the contact information including name, e-mail address and proof of certification of the employee transportation coordinator who is responsible for implementation and monitoring of the plan;
 - x. Provides the contact information including name and e-mail address of the on-site coordinator (if different from the ETC) for each site who is responsible for implementation and monitoring of the plan;
 - xi. Identifies the objectives of the plan and provides an explanation of why the plan is likely to achieve the applicable AVR target;
 - xii. Includes a parking cash out plan if required by Health & Safety Code 43845;
 - xiii. Includes a management commitment cover letter signed by the highest ranking official on site, or the executive responsible for allocating the resources necessary to implement the plan. This letter shall include a commitment to fully implement the program and state that all data is accurate to the best of the employer’s knowledge.
- c. The ETRP shall be updated every twelve months with an annual report submitted on the anniversary date of the initial plan approval date. The annual ETRP shall include the following:

- i. AVR calculations and documentation for the plan year;
 - ii. Lists plan strategies, changes to plan strategies, and a schedule for their implementation, including a mandatory guaranteed ride home program which provides an employee who rideshares a ride home in the event of an emergency or unplanned overtime with no cost to the employee;
 - iii. Determines a marketing strategy, indicating changes from the previous plan year, and includes mandatory new hire orientation which informs employees of the employer's emission reduction plan strategies at the time of hire, or new employee orientation;
 - iv. Determines the use of worksite parking facilities to achieve rideshare and transit objectives (i.e., number of reserved spaces for carpools and vanpool, etc.);
 - v. Lists the bicycle paths, routes, and facilities within one-half mile of the worksite;
 - vi. Lists public transit services within one-half mile of the worksite;
 - vii. Provides a general description of the type of business;
 - viii. Includes a sample of the employee survey for the plan year as described in subdivision (2)(b)(viii) of this subsection (B);
 - ix. Provides the contact information including name, e-mail address and proof of certification of the employee transportation coordinator who is responsible for the preparation, implementation and monitoring of the plan;
 - x. Provides the contact information including name and e-mail address of the on-site coordinator (if different from the ETC) for each site who is responsible for the implementation and monitoring of the plan;
 - xi. Identifies the objectives of the plan and provides an explanation of why the plan is likely to achieve the applicable AVR target;
 - xii. Includes a parking cash out plan if required by Health and Safety Code Section 43485;
 - xiii. Includes a management commitment letter as defined in subdivision (2)(b)(xiii) of this subsection (C); and
 - xiv. Includes updates and revisions to the ETRP as the Planning Director deems appropriate, if the annual report indicates that the goals of the previously approved ETRP have not been met.
- d. The procedure for calculating AVR at a worksite shall be as follows:
- i. The AVR calculation shall be based on data obtained from an employee survey as defined in subdivision (2)(b)(viii) of this subsection (B).
 - ii. AVR shall be calculated by dividing the number of employees who report to or leave the worksite by the number of vehicles arriving at or leaving the worksite during the peak periods. If an employee uses more than one commute mode per trip, the mode that is used for the majority of the trip shall be the mode that is used in calculating the number of vehicles. All

employees who report to or leave the worksite that are not accounted for by the employee survey shall be calculated as one employee per vehicle arriving at or leaving the worksite. Employees walking, bicycling, telecommuting, using public transit, arriving at the worksite in a zero-emission vehicle, or on their day off under a recognized compressed work week schedule shall be counted as arriving at or leaving the worksite without vehicles. Motorcycles shall be counted as vehicles. AVR survey reporting errors resulting from missing or incorrect information must be calculated as one employee per vehicle arriving at the worksite. Reporting errors that do not include the time when an employee arrives at or leaves the worksite must be assumed to occur in the peak period.

- iii. A child or student may be calculated for the AVR as an additional passenger in the carpool/vanpool if the child or student travels in the car/van to a worksite or school/childcare facility for the majority (at least fifty one percent) of the total commute.
 - iv. If two or more employees from different employers commute in the same vehicle, each employer must account for a proportional share of the vehicle consistent with the number of employees that employer has in the vehicle.
 - v. Any employee dropped off at a worksite shall count as arriving in a carpool only if the driver of the carpool is continuing on to the driver's worksite.
 - vi. Any employee telecommuting at home, off-site, or at a telecommuting center for a full work day, eliminating the trip to work or reducing the total distance by at least fifty-one percent shall be calculated as if the employee arrived at the worksite in no vehicle.
 - vii. Zero emission vehicles (electric vehicles) shall be counted as zero vehicles arriving at the worksite.
- e. Employers must keep detailed records of the documents which verify the average vehicle ridership calculation for a period of three years from plan approval date. Records which verify strategies in the ETRP have been marketed and implemented shall be kept for a period of at least three years from plan approval date. Approved ERPs must be kept at the worksite for a period of at least five years from plan approval date. For employers who implement their plans using a centralized rideshare service center, records and documents may be kept at a centralized location. Failure to maintain records or falsification of records will be deemed a violation of this Chapter.
- f. **AVR Performance Requirement for Employers Submitting an ETRP.** Employers who submit an ETRP to the City that does not meet the applicable AVR Target for the a.m. and p.m. peak period must implement a Good Faith Effort Plan in accordance with the following requirements:
- i. Employers shall maintain all currently approved good faith plan strategies during the plan compliance year until a new ETRP is approved.

- ii. Deletion or substitution of any plan strategies is not allowed unless approved by the Planning Director in writing.
 - iii. Unless otherwise stated, strategies must be implemented in such a way that they are reasonably likely to improve AVR. Employers must continue to demonstrate a good faith effort towards achieving the applicable AVR target for the peak period. If a worksite AVR decreases or does not improve from the previously submitted plan, the selection of strategies must be modified, and the number of strategies increased.
- g. **Good Faith Effort Determination Elements.** Employers submitting an ETRP who do not attain their applicable AVR Targets in the a.m. and p.m. peak periods shall comply with the following requirements:
- i. Employers must implement at least five of the following marketing strategies:
 - (1) Attendance at a City-approved marketing class, at least annually.
 - (2) Direct communication by the highest ranking official at the site, at least annually.
 - (3) Employer newsletter (hard copy or electronic) with rideshare content distributed at least quarterly.
 - (4) Flyers, announcements, memos or e-mails sent to employees at least quarterly.
 - (5) Company recognition of ridesharing at least annually.
 - (6) Employer rideshare events, at least annually.
 - (7) Rideshare bulletin board, kiosk, electronic exchange center, or information center, updated at least quarterly.
 - (8) New hire orientation (mandatory)
 - (9) Rideshare meetings or focus groups, at least semi-annually.
 - (10) Rideshare website, updated at least quarterly.
 - (11) Other marketing strategies that have been approved by the Planning Director and the SCAQMD as appropriate.
 - ii. Employers must implement at least five of the following basic support strategies:
 - (1) Commuter Choice Program.
 - (2) Flex time schedule.
 - (3) Guaranteed Ride Home Program (mandatory).
 - (4) Personalized commute assistance.
 - (5) Transit Information Center, updated at least quarterly.
 - (6) Free introductory transit pass.
 - (7) Preferential parking for carpools and vanpools.
 - (8) Ride matching, at least annually.

- (9) Other basic support strategies that have been approved by the Director and the SCAQMD as appropriate.
- iii. Employers must implement at least five of the following direct strategies:
- (1) Auto services (minimum dollar amount per employee per year will be indicated in ETRP forms).
 - (2) Bicycle program.
 - (3) Vanpool program.
 - (4) Compressed work week schedule.
 - (5) Employee clean vehicle purchase program.
 - (6) Off peak rideshare program.
 - (7) Telecommuting.
 - (8) Discounted or free meals (minimum dollar amount per employee per year will be indicated in ETRP forms).
 - (9) Direct financial incentives.
 - (10) Gift certificates (minimum dollar amount per employee per year will be indicated in ETRP forms).
 - (11) Parking charge or transportation allowance.
 - (12) Parking cash out program.
 - (13) Off-peak trip reduction program.
 - (14) Points program.
 - (15) Prize drawings, at least quarterly.
 - (16) Start-up incentive.
 - (17) Time off with pay.
 - (18) Transit subsidy.
 - (19) Other direct strategy programs that have been approved by the Planning Director and the SCAQMD.
- C. **Employer Clean Fleet Vehicle Purchase/Lease Program.** Employers of two hundred fifty employees or more at a worksite who utilize fleet vehicles for operations in the SCAQMD jurisdiction shall agree to acquire fleet vehicles that have emissions that are equivalent to or better than super low emission vehicle (SULEV) medium-duty trucks, ultra-low emission vehicle (ULEV) passenger cars or, ULEV light-duty trucks which meet CARB guidelines. Employers shall submit an employer clean fleet plan by completing the form provided by the City and submit it with their ERP if the employer operates fleet vehicles. SCAQMD Rule 1191 vehicle definitions are applicable for purposes of this strategy. Acquired fleet vehicles can include vehicles that have been purchased, leased for a term exceeding four consecutive months, or donated, either new or used. For the purposes of this provision, fleet is defined as four or more vehicles and a vehicle lease is for a term exceeding four consecutive months. The provisions of this strategy shall not apply to the following:

1. Emergency or rescue vehicles operated by local, state and federal law enforcement agencies, police and sheriff's department, fire department, hospital, medical or paramedic facilities, and used for responding to situations where potential threats to life or property exist, including but not limited to fire, ambulance calls, or life-saving calls as defined in Section 165 of the California Vehicle Code and are equipped with emergency lights and sirens.
2. Vehicles used by law enforcement agencies for undercover operations.
3. Heavy-duty on-road vehicles.
4. Employer fleets consisting of evaluation or test vehicles provided or operated by vehicle manufacturers for testing or evaluations, exclusively.
5. Specialized vehicles that incorporate specially designed safety and security features for the protection of employees during transit.
6. Non-passenger military vehicles.
7. Donated vehicles for the first 180 days of inclusion in the employer's fleet. At the end of 180 days employers may include the vehicle into their fleet only if it meets the emission standard requirement of this Chapter; or
8. If no comparable vehicles are available to address any performance requirements, the Planning Director, with approval of the SCAQMD, may approve use, on a case-by-case basis of non-SULEV or better vehicles.
9. Employers currently subject to SCAQMD Rule 1191 shall be deemed in compliance with this provision.

D. **Mobile Source Diesel PM/NOx Emission Minimization.** Employers of two hundred fifty employees or more shall submit a diesel PM/NOx emission minimization plan form provided by the City with their ERP if the annual plan submittal includes 1,000 or more a.m. peak period employees and the employer owns or operates mobile diesel equipment that operates exclusively and is located more than twelve consecutive months at that worksite. For multi-site employers this provision applies only to those individual sites with 1,000 or more employees in the a.m. peak period. Examples of on-site mobile sources include, but are not limited to, riding lawn mowers, yard hostlers, forklifts, or man-lifts. When implementing this strategy, the following requirements apply:

1. The employer shall submit a triennial diesel emission audit report that includes, at a minimum, an inventory of mobile diesel equipment, fuel usage, and use of control technologies, if any (e.g. clean fuels, engine modification, and after-treatment equipment). The triennial report is due the same time as the employer's ERP.
2. The employer shall implement technically feasible control strategies as identified in the plan approved by the Planning Director and the SCAQMD, provided the sum of the annualized capital costs and the annual operating and maintenance costs do not exceed the cost per number of a.m. peak period employees, according to the following schedule:

Mobile Source Diesel Emission Minimization Plan Maximum Cost per Worksite

Number of a.m. Peak period Employees	Maximum Cost
1,000-1,499	\$9,000
1,500-1,999	\$13,400

2,000-2,499	\$17,900
2,500-2,999	\$22,400
3,000-3,499	\$26,900
3,500-3,999	\$31,400
4,000-4,499	\$35,800
4,500-4,999	\$40,300
5,000-5,499	\$44,800
5,500-5,999	\$49,300
6,000-6,499	\$53,800
6,500-6,999	\$58,200
7,000-7,499	\$62,700
7,500-7,999	\$67,200
8,000-8,499	\$71,700
8,500-8,999	\$76,200
9,000-9,499	\$80,700
9,500-9,999	\$85,100
10,000 and up	\$89,600

- a. City staff will assist employers in submitting their Mobile Source Diesel Emission Minimization Plan to the SCAQMD for approval. Feasible minimization strategies shall be identified as conditions in the approved plan. Employers shall implement the plan expeditiously, but not later than two years from the date of the Diesel Emission Minimization Plan's approval.
- b. In conducting the cost analysis, the following methodology will be followed: The cost of a diesel emission control technology consists of capital costs and/or annual operating and maintenance costs. Capital costs will be annualized over the equipment life or a ten year default life may be applied with a 4% real interest rate. Capital costs are one-time costs; examples include the price of control equipment, engineering designs and installations, if applicable. Operating and maintenance costs are annual reoccurring costs and include expenditures on utilities, labor and material costs associated with control equipment operation.

- i. The cost analysis is calculated according to the following equation:

$$\text{Annualized Project Cost} = (\text{Capital Cost} * \text{CRF}) + \text{O\&M}$$

Where:

Capital Cost = One-time cost of equipment, design and installation

CRF = Capital Recovery Factor. For a 10 year default life with a 4% real interest rate the CRF is 0.123

O & M = Operation and maintenance costs for one year

- ii. Typical capital costs and operating and maintenance costs for off-road emission control strategies are listed below:

CAPITAL COSTS	O & M COSTS
Purchased Equipment Device/Cost	Fuel Costs
New Off Road Vehicle	Labor Costs for Maintenance
New Diesel Engines	Maintenance Materials
Alternative Fueling Stations	Replacement Plan
Diesel Particulate Filters	Any Savings
Engine Catalysts	
Direct & Indirect Installation Costs	
Engineering/Design	
Construction	

Only the incremental costs between new and existing equipment/devices should be accounted for.

- c. Employers may appeal the conditions of diesel minimization plan in writing first to the City and then to the SCAQMD Hearing Board pursuant to SCAQMD Rule 216-Appeals.
- d. Approval of the diesel minimization plan shall be subject to provisions of SCAQMD Rule 221-Plans

E. **MSERCs Minimum Requirements.** Employers implementing Mobile Source Emission Reduction Credits as defined in this Chapter must meet the minimum plan requirements:

- 1. **AVR Survey.** Conduct an AVR survey in accordance with the requirements of this Chapter
 - a. Employers must survey employees in both the a.m. and p.m. peak periods.

2. If the Director determines that the ERP marketing strategy is not effective, the City may require the employer to submit quarterly progress reports that demonstrate the effectiveness of such strategies.
 3. If it is necessary for an employer to amend an ERP before the plan can be approved, the employer shall have fifteen business days from the date of written notice in which to submit amendments to the Planning Director. Employers failing to submit the amendments shall have their ERP disapproved.
 4. An ERP will be disapproved if the program demonstrates a disproportionate impact on minorities, women, low-income or disabled employees.
 5. If a final determination that an element of an approved ERP violates any provision of the law issued by any agency or court with jurisdiction to make such determinations, then the employer shall, within forty-five calendar days, submit a proposed plan revision to the Director which shall be designed to achieve an AVR equivalent to the previously approved plan.
- H. **Employee Transportation Coordinators.** Employers of fifty or more employees, or thirty or more employees on and after January 1, 2016, shall designate a certified employee transportation coordinator (ETC) or an ETC and an on-site coordinator for each worksite included in the emission reduction plan.
1. An employer may elect to use a consultant ETC or TMO certified in accordance with this Chapter in lieu of an ETC; provided the consultant ETC or the TMO staff have received certified training and the site maintains an on-site coordinator.
 2. If the absence of a certified ETC, consultant ETC, or on-site coordinator exceeds eight consecutive weeks, a substitute ETC or on-site coordinator at the same level must be designated and trained. Written notice of such a change must be submitted to the Planning Director with proof of training no later than twelve weeks after the beginning of the absence.
 3. ETCs are not required to attend yearly update training.
- I. **Emission Reduction Factors.** The employee emission reduction factors (pounds per employee per year) used in calculations pursuant to this ordinance and SCAQMD Rule 2202 are specified in Rule 2202-On-Road Motor Vehicle Mitigation Options Implementation Guidelines and shall be used in calculations pursuant to this rule. The employee emission factors shall be revised upon EPA's final approval for use of the California Air Resources Board (CARB) approved on-road mobile source emission factor (EMFAC) model.

9.53.070 Contents of Worksite Transportation Plans

- A. All employers of ten to forty-nine employees shall be required to attend a City-sponsored training seminar upon written notification in accordance with Section 9.53.080 and submit a Worksite Transportation Plan (WTP) to the City in accordance with the procedures set forth in this Chapter. On and after January 1, 2016 this requirement shall apply to employers of 10-29 employees. The plan shall include at a minimum:
1. Worksite location.
 2. The contact information including name and title and e-mail address of the highest ranking official at the site.

3. The contact information including name , e-mail address and phone number of the designated on-site contact who has attended a City-sponsored training program and is responsible for the implementation of the WTP.
 4. The number of employees at the site.
 5. Description of the type of business.
 6. Description of any on-site amenities.
 7. Location of the kiosk or bulletin board and a description of the information displayed.
 8. Lists of the public transit services within one-half mile of the worksite.
 9. Lists of the bicycle paths, routes, and facilities within one-half mile of the worksite.
 10. Management commitment letter signed by the highest ranking official at the site.
 11. A Customer Incentive Plan that provides clients and visitors with information about how to access the site using green commute modes such as transit, walking, and biking. This information shall be placed in the lobby, reception area, cash register area and on the employer's website and shall include, but not be limited to: bus and transit routes within one-half mile of the site, bicycle parking and bicycle facilities within one-half mile of the site, optional incentives to encourage customers to use green commute modes (discounts, drawings, etc).
- B. Employers of ten to forty-nine employees shall make, at a minimum, the following information available to each employee. On and after January 1, 2016 this requirement shall apply to employers of 10-29 employees:
1. Carpooling/vanpooling information including information about the services provided by the regional ridesharing agency and their phone number and website address.
 2. Transit schedules and fare media purchase information.
 3. Information on air pollution and options to driving to work alone.
 4. Bicycle route and facility information, including regional/local bicycle maps. Locations of nearest bicycle racks, or locker storage facilities, and bicycle safety information.
 5. Information on walking to work and pedestrian safety.
 6. Make information available to new employees upon date of hire.
 7. Services provided by certified TMO, where available.
- C. Employers shall submit yearly an updated WTP in accordance with this Section. Employers who fail to submit an initial plan, or updated plan when required, shall be in violation of this Chapter.

9.53.080 Procedures for Submission of Emission Reduction Plans and Worksite Transportation Plans

- A. Any employer who establishes a new worksite in the City of Santa Monica, or whose employee population increases to more than ten, will be required to submit an ERP or WTP to the City of Santa Monica. Employers are required to provide notice to the Planning Director within thirty calendar days of establishing a new worksite, or increasing employee population. The notice shall be

written, and include the employer's name, the business and mailing address, the number of employees reporting to the worksite and the name of the highest ranking official at the worksite. Upon receipt of the notice, the City shall provide written notification to the employer and ninety calendar days thereafter the employer shall submit a plan and shall be subject to all provisions of this Chapter.

B. Any employer who has submitted a plan pursuant to this Chapter and whose employee population falls to fewer than ten employees for a six-month period, calculated as a monthly average, may submit a written request to the Planning Director to be exempt from this Chapter. The employer must submit documentation which demonstrates an employee population of less than ten employees. Such demonstration could be made by payroll records or other appropriate documentation.

C. **Employers with Fifty or More Employees (Thirty or More Employees after 1/1/2016).**

1. All employers with fifty or more employees, located within the City of Santa Monica and subject to this Chapter, shall submit to the City, within ninety calendar days of receipt of written notice to implement an ERP designed to reduce emissions related to employee commutes and to meet a worksite specific Emission Reduction Target (ERT) specifying pounds of emissions per employee for the subsequent year. This emission reduction program shall be in the form of an ERP. On and after January 1, 2016, this requirement will apply to all employers of thirty or more employees.

2. Employers required to submit an ERP shall identify measures in their ERP that will result in attainment of their emission reduction targets through the Emission Reduction Plan specified in this Chapter within ninety calendar days of written notification by the City.

D. **Employers of Ten to Forty-Nine Employees (Ten to Twenty-Nine Employees after 1/1/2016).**

Employers of ten to forty-nine employees are required to submit WTPs as defined in this Chapter within sixty calendar days of written notification by the City. On and after January 1, 2016, this requirement will apply to all employers of ten to twenty-nine employees.

E. **Multi-Site Employers of Two Hundred Fifty or More Employees.**

1. Multi-site employers of two hundred fifty or more employees, with one or more sites located outside the City of Santa Monica, but within the South Coast Air Basin and subject to SCAQMD Rule 2202, have the option of filing a Rule 2202 plan with the SCAQMD, or filing an ERP with the City of Santa Monica. Employers choosing to file a Rule 2202 plan with the SCAQMD will be required to notify the Planning Director in writing no later than fifteen business days prior to the plan due date.

2. Multi-site employers of two hundred fifty or more employees, with worksites owned or leased by the same employer and located wholly within the City of Santa Monica, upon the Planning Director's approval of a written request, may submit a single ERP or WTP encompassing all worksites.

F. All employer ERPs and WTPs shall be consistent with any plans previously submitted by the developer of the property at which the worksite is located, provided however, that where requirements of this Chapter are more stringent, the requirements of this Chapter shall apply.

G. If an employer's ETRP or WTP due date falls on a day City Hall is normally closed (i.e., weekend, holiday, 9/80 Friday off), the employer may submit the ERP or WTP on the first business day after the plan due date.

- H. If an ERP or WTP is mailed to the City, the plan must be postmarked on or before the plan due date. If the plan is postmarked after the plan due date, the plan shall be considered late and the employer shall be charged a penalty of 25% of the total Employer Annual Transportation Fees and forfeit any discount given for attainment of the applicable AVR target in the a.m. and p.m. windows.
- I. After an employer submits a plan, the Planning Director must either approve or disapprove the plan within ninety calendar days for an ERP and within sixty calendar days for a WTP.
 - 1. Written notice of approval or disapproval shall be given. If the plan is disapproved, the reasons for disapproval shall be given in writing to the employer.
 - 2. Once the plan is approved, the employer will have sixty calendar days from the date of approval to implement all aspects of the plan.
 - 3. Any plan disapproved by the Planning Director must be revised by the employer and resubmitted to the Planning Director within thirty calendar days of written notice of disapproval or the employer shall be deemed in violation of this Chapter. The City has ninety calendar days to review the resubmitted plan.
 - 4. Upon receipt of the second disapproval written notice, and until such time as a revised plan is submitted to the Planning Director, the employer is in violation of this Chapter.
- J. An approved ERP or WTP may be revised between plan submittal dates by submitting a plan revision in writing to the Planning Director. The revision shall not be effective until approved by the Planning Director.
- K. Employers who relocate to another worksite within the City of Santa Monica shall notify the City in writing of relocation within thirty calendar days. The City shall notify the employers in writing to submit an updated version of the employee profile and worksite analysis of the ERP or WTP.
- L. No employer of two hundred fifty or more employees shall be responsible for complying with this Chapter if the City and the SCAQMD have an agreement which provides an exception to those employers from the requirements of filing a Rule 2202 plan with the SCAQMD. If at any time he City fails to meet its obligation under the executed agreement, employers of two hundred fifty or more employees in the City shall be released from this Chapter and shall be subject to compliance with the SCAQMD Rule 2202 requirements.

9.53.090 Employer Monitoring and Enforcement

A. Audits.

- 1. **City Audits.** The City shall perform audits on a selective basis. Employers shall receive at least five days written notice of such an audit. An audit may include, but shall not be limited to, an on-site inspection and demonstration that an employer is performing the on-going monitoring required by this Chapter.
- 2. **Compliance Inspection.** Any employer subject to this Chapter is subject to a compliance inspection. This inspection will require access to records that demonstrate implementation and monitoring of the employer's Emission Reduction Plan.

B. Violations of this Chapter.

1. No business license shall be renewed if an employer has not paid the fees required by this Chapter.
2. Failure to submit an initial plan when due, annual report and plan update when due, or mandatory plan revisions when due, or failure to implement provisions of an approved plan as set forth in the plan implementation schedule, failure to keep records, falsification of records, failure to have a certified ETC or designated on-site coordinator on site if required, or failure to submit proper fees in accordance with this Chapter is a violation of this Chapter. Additionally, upon receipt of a second disapproval notice and until such time as a revised plan is approved by the City, the employer shall be deemed in violation of this Chapter.
3. If an employer chooses the employee trip reduction option and complies with all provisions of the approved plan but fails to meet the applicable AVR targets, that is not a violation of this Chapter, however, the City shall require the employer to provide additional incentives and marketing strategies in the ETRP with the goal of increasing the employer's AVR. Failure to obtain an approved updated plan shall be a violation of this Chapter.
4. If an employer chooses any emission reduction option (excluding the employee trip reduction option), the employer must meet the required emission reduction targets for that plan year. Failure to do so will be considered a violation of this Chapter.
5. Each day an employer violates the provisions of this Chapter or the terms and conditions of any approved ERP or WTP shall constitute a separate violation.

C. Enforcement Actions. In addition to any other remedy provided for by law, the City may take the following actions for violations of this Chapter or the terms and conditions of any approved ERP or WTP.

1. Require the addition of elements to a WTP and ERP submitted by an employer.
2. Revoke any approval of an ERP or WTP.
3. Revoke the business license held by any violator.
4. Impose administrative remedies as provided for in Chapter 1.09 or 1.10.
5. Any person violating any provision of this Article of the Municipal Code shall be guilty of an infraction, which shall be punishable by a fine not exceeding two hundred fifty dollars, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars per violation, or by imprisonment in the County Jail for a period not exceeding six months, or by both such fine and imprisonment.
6. Any person convicted of violating any provision of this Article shall be ordered to reimburse the City its full investigative costs.
7. Notwithstanding any other provisions of this Chapter regarding penalties for enforcement actions or for violations, for violators with two hundred fifty or more employees, the City, in addition to any other remedies under this Chapter, shall refer the matter to the SCAQMD for appropriate action in accordance with the Memorandum of Understanding executed between the City and the SCAQMD.

9.53.100 Administrative Appeals

- A. Disapproval of an ERP or WTP by the Director's designee, including a revision of such a plan, may be appealed to the Emission Reduction Plan Appeals Board.
- B. An appeal of an action by the Director's designee shall be filed with the City within ten calendar days following the date of the action from which an appeal is taken. If no appeal is timely filed, the action taken by the Director's designee shall be final.
- C. A hearing on an appeal shall be scheduled within sixty calendar days of the date of filing an appeal. Notice of an appeal hearing shall be mailed to the appellant not less than ten calendar days prior to the hearing scheduled before the Director or Hearing Officer.
- D. A written decision on an appeal shall be issued thirty calendar days from the date of the hearing.
- E. An action by the Director's designee that is appealed to the Director or Hearing Officer shall not become effective unless and until approved by the Director or Hearing Officer.
- F. A decision of the Director or Hearing Officer shall be final except for judicial review and there shall be no appeal to the Commission or City Council.

9.53.110 Developer TDM Fee

- A. **Developer Annual TDM Fee.** An annual developer TDM fee shall be required for developers of projects that will result in the construction of:
 - 1. Nonresidential projects: 7,500 square feet or more
 - 2. Residential projects: 16 or more residential units
 - 3. Mixed-use projects: 16 or more residential units with any associated nonresidential floor area or 7,500 sf or more of nonresidential floor area with any number of residential units
- B. Developer TDM fees collected pursuant to this Chapter shall be deposited into an account separate from the General Fund. The purpose of the developer TDM fee is to pay for the cost of administration, including TDM outreach and support and City TMO formation activities, implementation, investigation, inspection, audit, and enforcement of this Chapter. The fee shall be established by resolution of the City Council and amended from time to time and shall be payable prior to issuance of Certificate of Occupancy and annually thereafter.

9.53.120 Procedures for Submission of Developer TDM Plan.

- A. **Preliminary TDM Plan Required.** Developers shall be required to submit a Preliminary Developer TDM Plan meeting the requirements of Section 9.53.130(A), with the exception of subdivisions (3), (4), and (7), at the time of application for the project's planning entitlement.
- B. **Time Limits for Review.** The Planning Director shall provide initial comments to the developer on the Preliminary Developer TDM Plan within thirty calendar days of application submittal.
- C. **Approval Required.** The Planning Director shall approve or disapprove the Preliminary Developer TDM Plan prior to project approval by the Planning Division, Planning Commission, or the City Council, based on the following findings:
 - 1. Inclusion of all applicable components of a Developer TDM Plan in this Chapter.

2. Whether the Developer TDM Plan clearly outlines site-specific strategies.
 3. Likelihood of program measures to achieve applicable AVR Target.
- D. **Notice.** Notice of approval or disapproval shall be given in writing to the developer. Any plan disapproved by the Planning Director must be revised by the developer and resubmitted to the City within thirty calendar days of the notice of disapproval.
- E. **Physical Components.** Prior to issuance of a building permit, physical components of the Plan must be shown on the construction drawings and be approved by the Planning Director.
- F. **Final TDM Plan Required.** Prior to issuance of a Certificate of Occupancy, a Final Developer TDM Plan in accordance with Section 9.53.130 shall be submitted for review and approval by the Planning Director. The Final Developer TDM Plan shall also be recorded against the property to ensure compliance with this Chapter.

9.53.130 Content of Developer TDM Plan

- A. **Developer TDM Plan Format.** The Developer TDM Plan shall result in the Developer achieving the applicable AVR Target in this Chapter and shall include:
1. Project description.
 2. Site conditions that affect commute travel.
 3. Statement of commitment from the Property Owner to:
 - a. Conduct annual surveys in conformance with this Chapter to determine vehicle trip behavior including collection of data on employee means of travel, arrival time, and interest in information on ridesharing opportunities (this shall not be applicable to residential units);
 - b. Monitor Developer TDM Plan; and
 - c. Report annually in a manner required by this Chapter.
 4. Annual Budget to implement Developer TDM Plan.
 5. Duties, responsibilities, and qualifications of a certified PTC.
 6. Developer TDM Plan program measures.
 7. Implementation Strategy that specifies how the Developer TDM Plan will be implemented, monitored, and who will be responsible for submitting annual status reports to the City.
- B. **Physical and Programmatic Elements.** The Developer TDM Plan program measures shall include the following:
1. **Physical Elements.** In addition to all physical facility improvements required by Chapter 9.28 Parking, Loading, and Circulation, the following additional physical elements shall be required to be implemented by the Developer to the satisfaction of the City:
 - a. **On-Site Transportation Information.** On-site transportation information located where the greatest number of employees, visitors, and residents are likely to see it. Such transportation information may be provided in an on-site physical location, such as a bulletin board or kiosk, or through other media, such as on a website or other digital means. Information shall include, but is not limited to, the following:
 - i. Current maps, routes and schedules for public transit routes within one-half mile of the project site.

- ii. Transportation information including regional ridesharing agency, local transit operators, and certified TMO where available.
- iii. Ridesharing promotions material supplied by commuter-oriented organizations.
- iv. Bicycle route and facility information, including rental and sales locations, regional/local bicycle maps, and bicycle safety information within one-half mile of the project site.
- v. A list of facilities available for carpoolers, vanpoolers, bicyclists, transit riders and pedestrians at the site.
- vi. Walking and biking maps for employees and visitors, which shall include but not be limited to information about convenient local services and restaurants within walking distance of the project.
- vii. Information to commercial tenants and employees of the project regarding local rental housing agencies.

2. **Programmatic Elements.** Additional programmatic elements shall also be included in the Developer TDM Plan program measures based on the type of development as follows:

- a. **Project Transportation Coordinator.** A designated Project Transportation Coordinator shall manage all aspects of the Developer TDM Plan and participate in City-sponsored workshops and information roundtables. The PTC shall be responsible for making available information materials on options for alternative transportation modes and opportunities particularly programs that involve commuter subsidies such as parking cashout and vanpool subsidies. In addition, transit fare media and day/month passes will be made available through the PTC to employees, visitors, and residents during typical business hours. In the event that the project is sold or transferred, developer shall notify the Planning Director of the new point of contact for the successor and/or new PTC for the project within thirty calendar days of such sale or transfer.
- b. **Nonresidential Projects and Nonresidential Components of Mixed-Use Projects.** Nonresidential projects that result in the addition of 7,500 square feet of floor area or more and the nonresidential portion of mixed-use projects shall provide, at minimum, the following programmatic elements:
 - i. New employee orientation.
 - ii. Parking cashout.
 - iii. Incentives for employees that live within ½ mile of workplace.
 - iv. Information regarding availability of bike commute training offered either on-site or by a 3rd party.
 - v. Free on-site shared bicycles intended for employee use during the work day (e.g. Bike@Work program). This shall be optional if citywide bikeshare is available within a 2-block radius of the project site.

- vi. Commuter matching services for all employees on an annual basis, and for all new employees upon hiring.
- vii. Information regarding benefits of: Compressed Work Schedule, Flex-Time Schedule, Telecommuting, and Guaranteed Ride Home.
- viii. Transportation allowance equal to at least 50% of the current cost of a monthly regional transit pass of the employee's choice (e.g. Big Blue Bus 30-Day Pass, Metro EZ Pass, Metro TAP Pass or equivalent). An employee accepting the Transportation Allowance shall be required to execute a contract agreeing that said employee will not utilize a single occupancy vehicle for the majority (at least 51%)% of their daily commute distance more than five business days per month. The contract shall also specify the employee's alternative commute mode (e.g. transit, bike, walk). The employee must demonstrate compliance as reasonably required by the property owner.
- ix. Customer and visitor incentives for uses with significant numbers of customers and visitors such as retail, food service, hospitality, and medical office:
 - (1) Customer incentive program
 - (2) Public directions prioritizing rideshare modes
 - (3) Special event rideshare services
 - (4) Shared ride service
- x. Any additional measures that would result in the developer achieving the applicable AVR Target.
- xi. Active participation in the formation and ongoing activities of a TMO, if established and includes the project site, attendance at organizational meetings, providing parking and travel demand data to the TMO, and making available information to project tenants relative to the services provided by the TMO.

c. **Residential Projects and Residential Components of Mixed-Use Projects.** Projects that result in the addition of 16 residential units or more and the residential portion of mixed-use projects shall include the following programmatic elements:

- i. **Transportation Welcome Package for Residents.** Provide all new residents of the residential component of the project site with a welcome package on a per-unit basis. The welcome package shall at minimum, include the information required in subdivision (1)(a) of this subsection (B) (Physical Elements - On-Site Transportation Information).
- ii. **Local Preference Marketing Plan.** Prepare and implement a marketing and outreach program for the rental of units that targets (i) employees of businesses located within an one-half mile radius of the project (ii) employees of the local hospitals (iii) employees of the Santa Monica Malibu Unified School District (iv) employees of the City's police and fire departments (v) employees of businesses outside the one-half mile radius but within the City of Santa Monica. In leasing units, the developer shall give priority to applicants in the foregoing categories provided that all such

applicants meet generally applicable leasing qualifications and criteria imposed by the developer. Nothing in this Chapter shall require that any residential units be occupied by such persons.

- iii. **TMO Participation.** Active participation in the formation and ongoing activities of a certified TMO, if established and includes the project site, including payment of annual dues at a level so that trip reduction services are provided as set forth by the TMO, attendance at organizational meetings, providing travel and parking demand data to the TMO, and making available information to project tenants relative to the services provided by the TMO.
- iv. **Transportation Allowance.** Offer a monthly transportation allowance equal to at least 50% of the current cost of a monthly regional transit pass of the resident's choice (e.g. Big Blue Bus 30-Day Pass, Metro EZ Pass, Metro TAP Pass or equivalent). The Transportation Allowance shall be offered to all residents listed on a lease and their immediately family living at the same address. Immediate family includes spouse, partner, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister-in-law, and brother-in-law. A resident accepting the Transportation Allowance shall elect to not lease parking spaces at the Project and be required to execute a contract agreeing that said resident does not own or long-term lease an automobile and will not own not long-term lease an automobile for so long as they are in receipt of the Transportation Allowance. The contract shall also specify the resident's non-single occupancy vehicle commute mode (e.g. transit, bike, walk). Children who reside full-time at the building shall be eligible for the Transportation Allowance if the parent that is primarily responsible for transporting the child is also eligible for the Transportation Allowance. The child's parent or guardian shall sign an affidavit stating that the child permanently resides at the building on a full-time basis, and the child is primarily transported by a parent or guardian on the lease that is eligible for the Transportation Allowance.

C. **Developer TDM Plan Applicable to Project Occupants.** The developer shall ensure that compliance with the Developer TDM Plan is included as a requirement in lease documents and any other agreements for occupancy in the project in order to inform and commit project occupants to applicable measures of the approved Developer TDM Plan.

- 1. **All Projects.** Allowing employees and residents to participate in campaigns that promote use of carpools, vanpools, transit, walking, bicycling, carshare, bikeshare, and other trip reduction efforts.
- 2. **Nonresidential Projects.** For nonresidential projects and nonresidential components of mixed-use projects, participating in the annual project commute survey.

D. **Employer Worksite Plan Consistency.** Employer ERPs and WTPs submitted subsequent to the approval of a Developer TDM Plan shall be consistent with the approved Developer TDM Plan, at a minimum, unless the Planning Director approves alternative plan components.

- E. **Recording Required.** Prior to Certificate of Occupancy, the developer shall record an agreement, in a form acceptable to the City, that makes the Developer TDM Plan a condition of property ownership. The agreement shall include provisions to:
1. Guarantee adherence to the TDM objectives and perpetual operations of the Developer TDM Plan for all legal parcels within the site regardless of property ownership.
 2. Inform all subsequent property owners of requirement of the Developer TDM Plan.
 3. Inform the Planning Director of any change in ownership.
 4. Identify consequences of non-compliant performance.

9.53.140 Monitoring and Remedies for Violating Developer TDM Plan

- A. **Annual Monitoring Required.** Developer shall submit an annual monitoring report on the Developer TDM Plan (“Developer TDM Annual Status Report”) starting on the first anniversary of issuance of the project’s Certificate of Occupancy or Temporary Certificate of Occupancy, if applicable. The annual monitoring report shall include the following:
1. Confirmation of compliance with all Developer TDM Plan elements.
 2. For nonresidential projects and nonresidential components of mixed-use projects, AVR calculations and documentation for the monitoring year based upon cumulative employee surveys for the project undertaken for one consecutive week each year. The survey must be conducted in accordance with Section 9.53.060(B) except that zero emission vehicles shall be counted as vehicles.
 3. Updated statement of commitment from Property Owner.
 4. Updated annual budget to implement Developer TDM Plan.
 5. Contact information including name, e-mail address, and proof of certification of the PTC who is responsible for the preparation, implementation, and monitoring of the Developer TDM Plan.
 6. Effect of the Developer TDM Plan on on-site transportation choice, parking availability, and transit ridership.
 7. Updated implementation strategy.
- B. **Time Limits for Review.** The Planning Director shall provide the property owner written notification indicating whether the TDM Annual Status Report is approved or deemed unacceptable within 45 calendar days of its receipt. Alternatively, the Planning Director may notify the property owner in writing of an extension of this deadline of no more than 15 calendar days.
- C. **Violations.** Violations of the Developer TDM Plan shall include but not be limited to failure to:
1. Submit a TDM Annual Status Report.
 2. Pay the Developer TDM Fee.
 3. Implement strategies contained in the Developer TDM Plan.
 4. Achieve the established AVR requirement.
- D. **Remedies for Violation.**
1. If the developer commits a violation other than not achieving the applicable AVR target, the City shall issue a written warning and the developer shall have 30 calendar days from receipt

of the notice to correct the violation. If the developer continues to commit the violation 60 calendar days after receipt of the first written warning, the developer shall be subject to a fine of \$5/residential unit/day and \$5/employee in the project/day. The fine shall be deposited in accordance with Section 9.53.110. In the case of mixed-use projects that include both residential units and employees, the fine shall be calculated separately for each use.

2. If the annual monitoring report shows that the applicable AVR Target has not been achieved for the project, then the developer shall submit a list of modifications to the Developer TDM Plan to the Planning Director for approval within 60 calendar days of the report submittal. The Planning Director shall review the list of modifications and may also recommend modifications to the Developer TDM Plan, as appropriate, in order to ensure that the applicable AVR target is achieved. Upon approval of the requested changes, the developer shall have 30 calendar days to implement the approved measures. Developer shall then submit a follow-up monitoring report within 6 months of implementation of the new measures. If the project continues to not achieve the applicable AVR Target, developers have the option of:
 - a. Continuing to implement additional measures for approval by the Planning Director.
 - b. Alternatively bring the project AVR into alternative compliance through the payment of an Alternative Compliance Fee pursuant to Section 9.53.140(E).
3. If the project continues to not be in substantial compliance with the Developer TDM Plan, the City shall have the option to:
 - a. Withhold the issuance of building permits, certificates of occupancy, and other City issued permits or licenses.
 - b. Issue a stop work order.
 - c. Request that the City Attorney take appropriate enforcement action. Referral to the City Attorney is not a condition precedent to any enforcement action by the City Attorney.

E. **Alternative Compliance if AVR Target is Not Achieved.** If a project does not achieve the applicable AVR Target established for the project, developer may choose to pay an Alternative Compliance Fee to off-set the AVR Target in order to achieve the AVR Target/work day. The fee shall only be applicable upon completion of a fee study and shall be established by resolution of the City Council. The fee shall be based on the following calculation:

Step 1:

$$\frac{\text{Total Number of Employee Trips Per Week}}{\text{AVR}} = \text{Total Number of Vehicle Trips Produced by Project Per Week}$$

Step 2:

$$\frac{\text{Total Number of Employee Trips Per Week}}{\text{AVR Target}} = \text{Total Number of Vehicle Trips Allowed to Achieve Target AVR Per Week}$$

Step 3:

$$\frac{\text{Total Number of Produced Trips} - \text{Total Number of Allowable Trips}}{\text{Vehicle Trip Reduction Necessary to Achieve AVR Target}} / 5 = \text{Daily Vehicle Reduction Needed to Achieve AVR Target}$$

Step 4:

Alternative Compliance Fee = Compliance Fee x Daily Vehicle Reduction Needed to Achieve AVR Target x work days per year (based on 22 work days per month)

- F. **Procedures for Modification of Developer TDM Plan.** Developer may submit a request to modify the Developer TDM Plan with such request to be approved by the Planning Director. Approval to modify the Developer TDM Plan may be granted if the modifications are (i) likely to result in the project achieving its applicable AVR Target and (ii) are equally or more effective as the measures that are being modified. Developer shall provide quantifiable evidence, analysis, or consultant report that demonstrates the requested changes will not cause the project AVR to decrease.
- G. **Combined TDM Annual Status Report for Multiple Projects.** Upon the Planning Director's approval of a written request, a Developer may submit a single TDM Annual Status Report encompassing multiple projects to the requirements of this Chapter if the projects are owned by the same Developer and located wholly within the City of Santa Monica.
- H. **Maintenance of Detailed Records Required.** Developers must keep detailed records of the documents which verify the average vehicle ridership calculation for a period of three years from plan approval date. Monitoring mechanisms which verify that the Developer TDM Plan has been implemented shall be kept for a period of at least three years from plan approval date. Monitoring mechanisms may include but not be limited to:
 - 1. Printed documentation of site features (e.g. location of carpool and vanpool parking spaces).
 - 2. Photographs of TDM program facilities (e.g. vanpool and carpool parking spaces).
 - 3. Field site inspections by the City.
 - 4. Other building site reports and surveys that the City may deem appropriate.

Approved Developer TDM Plans must be kept at the project site by the PTC. Failure to maintain records or falsification of records will be deemed a violation of this Chapter.

9.53.150 Transportation Management Organizations (TMOs)

- A. Employers and Developers may propose to use the services of a City-certified TMO to implement their Employer Trip Reduction Plans or Developer TDM Plans provided that membership in a City-certified TMO includes payment of annual dues at a level so that trip reduction services are provided, as set forth by the TMO.
- B. The City may certify TMOs that submit a first year work plan which outlines the following:
 - 1. A mission statement which describes the reasons for the organization's existence and the overriding goals of the TMO, including how the TMO will implement the goals of the LUCE and No Net New p.m. Peak Trips.

2. Goals and objectives for the first year which target achievement of the mission statement. Specific activities and tasks shall be listed to show how the members will be served by the TMO and how the TMO will help meet the area and regional transportation and air quality goals.
 3. A plan for a baseline survey of commuters and employers in the area to establish existing commuter characteristics and attitudes of commuters towards traffic and the use of commute alternatives. The employer survey shall obtain a descriptive profile of existing programs and employer attitudes toward developing new programs.
 4. The services to be provided by the TMO to its members, including the commute alternatives to be provided and promoted, the advocacy and marketing activities planned including in-person outreach to employees, and the role of the TMO staff in providing the services.
 5. A marketing plan which creates an identity for the TMO and which describes how the TMO's planned services will be marketed to member employers and their employees.
 6. A monitoring and evaluation plan which will be used to measure progress against goals and objectives, including results of the TMO's activities with each member. This plan will be used to provide annual reporting information to the City.
 7. A budget which details how the work of the TMO will be accomplished, including details of public and private financing and expenditures.
- C. The TMO must provide an annual report to the City to become recertified yearly. The annual report shall include the same elements as the first year plan with the following exceptions:
1. The mission statement shall be revised based on changes in the goals and objectives of the TMO, if any.
 2. The goals and objectives shall be updated to reflect progress and changes in the TMO services.
 3. The baseline survey need not be repeated, however, the annual report shall include follow-up monitoring and evaluation activities related to the baseline survey.
 4. The evaluation and results shall be discussed and used to describe the next year's planned activities.

Chapter 9.54 Land Divisions

Sections:

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9.54.010 General Provisions and Responsibilities

A. Citation and authority.

This Chapter is adopted to supplement and implement the Subdivision Map Act, Government Code Section 66410 et seq., and may be cited as the subdivision ordinance of the City of Santa Monica.

B. Purpose.

It is the purpose of this Chapter to regulate and control the division of land within the City of Santa Monica and to supplement the provisions of the Subdivision Map Act concerning the design, improvement and survey data of subdivisions, the form and content of all maps provided for by the Subdivision Map Act and procedures to be followed in securing the official approval of the Planning Commission and City Council regarding such maps. To accomplish this purpose, the regulations outlined in this Chapter are determined to be necessary for the preservation of the public health, safety and general welfare, to promote orderly growth and development and to promote and implement the General Plan. The requirements of this Chapter are in addition to other requirements of the City of Santa Monica.

C. Conformity to General Plan, specific plan and zoning ordinances.

No land shall be subdivided and developed for any purpose which is not in conformity with the General Plan and any specific plan of the City of Santa Monica or authorized by the comprehensive land use ordinance of the City.

D. Application.

The regulations set forth in this Chapter shall apply to all subdivisions or parts thereof within the City of Santa Monica and to the preparation of subdivision maps thereof and to other maps or certificates provided for by the Subdivision Map Act. Each such subdivision and each part thereof lying within the City of Santa Monica shall be made and each such map or certificate shall be prepared and presented for approval as hereafter provided for and required.

E. **Definitions.** The following words or phrases as used in this Chapter shall have the following meanings:

1. **Advisory Agency.** A designated official or an official body charged with the duty of making investigations and reports on the design and improvements of proposed divisions of real property.
2. **Air Space Lot.** A division of the space above or below a lot, or partially above and below a lot, having finite width, length, and upper and lower elevations, occupied or to be occupied by a use, building or portion thereof, group of buildings or portions thereof, accessory buildings or portions thereof, or accessory uses. An air space lot shall be identified with a separate and distinct number or letter on a final subdivision or parcel map recorded in the office of the County Recorder.
3. **Block.** The area of land within a subdivision which area is entirely bounded by streets, highways or ways, except alleys, or the exterior boundary or boundaries of the subdivision.
4. **Community Apartment.** A project as defined in Business and Professions Code Section 11004 in which an undivided interest in the land is coupled with the right of exclusive occupancy of any apartment.
5. **Condominium.** An estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an apartment, office, or store. A condominium may include, in addition, a separate interest in other portions of such real property.
6. **Conversion.** The creation of separate ownership of existing improved real property together with a separate interest in space of residential, industrial or commercial buildings thereon. A conversion may be accomplished by condominium, stock cooperative, community apartment, or cooperative apartment.
7. **Cooperative Apartment.** Pursuant to the City's authority to regulate subdivisions not regulated by the Subdivision Map Act as authorized by Government Code Section 66411, a project of more than four units in which an undivided interest in land is coupled with the exclusive right of occupancy of any apartment located thereon, whether such right is contained in the form of a written or oral agreement, when such right does not appear on the face of the deed.
8. **Design.** Street alignments, grades and width; drainage and sanitary facilities and utilities, including alignments and grades thereof; location and size of all required easements and rights-of-way; fire roads and fire breaks; lot size and configuration; traffic access; grading; land to be dedicated for park or recreational purposes; and such other specific requirements in the plan and configuration of the entire subdivision as may be necessary or convenient to ensure conformity to or implementation of the General Plan or any adopted specific plan.
9. **Final Map.** A map showing a subdivision for which a tentative and final map is required by this Chapter, prepared in accordance with the provisions of this Chapter and the Subdivision Map Act and designed to be recorded in the office of the County Recorder.
10. **Final Parcel Map.** A final map for a parcel.

11. **Final Subdivision Map.** A final map for a subdivision.
12. **General Plan.** The General Plan of the City of Santa Monica.
13. **Improvement.** Street work, storm drainage, utilities and landscaping to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof; or to such other specific improvements or type of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approved by the local agency or by a combination thereof, is necessary to ensure conformity to or implementation of the General Plan or any adopted specific plan.
14. **Lot.** A parcel or portion of land separated from other parcels or portions by description, as on a subdivision or record of survey map, or by metes and bounds, for purpose of sale, lease, or separate use.
15. **Lot Line Adjustment.** A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created.
16. **Merger.** The joining of two or more contiguous parcels of land under one ownership into one parcel.
17. **Subdivision Map Act.** The Subdivision Map Act of the State of California.
18. **Parcel Map.** A map showing a division of land of four or less parcels as required by this Chapter, prepared in accordance with the provisions of this Chapter and the Subdivision Map Act.
19. **Peripheral Street.** An existing street whose right-of-way is contiguous to the exterior boundary of the subdivision.
20. **Remainder.** That portion of an existing parcel which is not included as part of the subdivided land. The remainder is not considered as part of the subdivision but must be shown on the required maps as part of the area surrounding subdivision development.
21. **Stock Cooperative.** A corporation as defined in Business and Professions Code Section 11003.2 which is primarily for the purpose of holding title to property if shareholders receive the right to exclusive occupancy in a portion of property and whose right to occupancy transfers concurrently with the transfer of an interest in the corporation.
22. **Subdivider.** A person who proposes to divide, divides, or causes to be divided real property into a subdivision for the subdivider or for others; except employees and consultants of such persons or entities acting in such capacity, are not “subdividers.”
23. **Subdivision.** The division, by any subdivider, of any units or unit of improved or unimproved contiguous land shown on the latest equalized County assessment roll as a unit or as contiguous units for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easements or railroad rights-of-way. Subdivision includes a condominium project, as defined herein or in California Civil Code Section 1351(f), a community apartment project, as defined herein or in California Civil Code Section 1351(d), a stock cooperative, as defined herein or in California Civil Code Section 1351(m), a cooperative apartment as defined herein, or two or more air space lots as defined herein. Any

conveyance of land to a governmental agency, public entity, or public utility shall not be considered a division of land for purposes of computing the number of parcels. "Subdivision" does not include anything excluded from the definition of subdivision in the Subdivision Map Act unless otherwise provided for herein.

24. **Subdivision Map.** A map showing a division of land of five or more parcels as required by this Chapter, prepared in accordance with the provisions of this Chapter and the Subdivision Map Act.
25. **Tentative Map.** A map made for the purpose of showing the design and improvements of a proposed subdivision and the existing conditions in and around it.
26. **Tentative Parcel Map.** A tentative map for a parcel.
27. **Tentative Subdivision Map.** A tentative map for a subdivision.
28. **Zoning Ordinance.** Divisions 1 through 5 of Article 9 of the Municipal Code.

F. **City Attorney.**

The City Attorney shall be responsible for approving as to form all CC & Rs, subdivision improvement agreements, and subdivision improvement securities.

G. **City Council.** The City Council shall have the following responsibilities:

1. The City Council shall have final jurisdiction in the approval of final subdivision and parcel maps and improvement agreements and the acceptance by the City of such land and/or improvements as may be proposed for dedication to the City.
2. The City Council shall act as the appeal board for hearing appeals of the approval, conditional approval or denial of tentative maps and the approval or denial of extensions.
3. The City Council shall establish by resolution reasonable fees for the processing of maps and for other procedures required or authorized by this Chapter or the Subdivision Map Act.
4. The City Council shall approve or deny applications for a stay of expiration of tentative subdivision or parcel maps pursuant to Section 9.54.090(C).

H. **City Engineer.** The City Engineer shall have the following responsibilities:

1. Establishing design and construction details, standards and specifications;
2. Determining if proposed subdivision improvements comply with the provisions of this Chapter and the Subdivision Map Act;
3. The processing and certification of final maps, reversion to acreage maps, and amended maps; the processing and approval of subdivision improvement plans, lot line adjustments, mergers and certificates of compliance;
4. The inspection and approval of subdivision improvements;
5. The acceptance of private improvements.

I. **Planning Commission.**

The Planning Commission is designated as the Advisory Agency and shall be responsible for approving, conditionally approving, or denying the application for tentative maps and the approval or denial of extensions.

J. **Director of Planning & Community Development.**

The Director of Planning & Community Development (Director), or designee, shall investigate proposed subdivisions for conformity to the General Plan, specific plans, and zoning ordinances of the City and reporting his or her findings, together with recommendations for approval, conditional approval or denial to the Planning Commission and City Council.

9.54.020 Maps Required

A. **General.** The necessity for tentative subdivision maps, final subdivision maps, tentative parcel maps and final parcel maps shall be governed by the provisions of this Section 9.54.020 and the Subdivision Map Act.

B. **Five or more parcels.** A tentative subdivision map and final subdivision map shall be required for all divisions of land into five or more parcels, five or more condominiums as defined in Civil Code Section 783, a community apartment project containing five or more units, a stock cooperative containing five or more units, a cooperative apartment containing five or more units, or an air space subdivision containing five or more lots.

C. **Four or less parcels.** A tentative parcel map and final parcel map shall be required for all divisions of land which create four or less parcels, four or less condominiums as defined in Civil Code Section 783, a community apartment project containing four or less units, a stock cooperative containing four or less units, or a cooperative apartment containing four or less units, or an air space subdivision containing four or less lots.

D. **Maps not required.** A tentative or final map shall not be required for any of the following:

1. Divisions of land created by short-term leases (terminable by either party on not more than thirty days' notice in writing) of a portion of an operating right-of-way of a railroad corporation defined as such by Public Utilities Code Section 230, provided, however, that upon a showing made to the City Engineer based upon substantial evidence that public policy necessitates such a map, this exception shall not apply;
2. A lot line adjustment between four or fewer existing adjoining parcels, provided:
 - a. No additional parcels or building sites have been created,
 - b. The adjustment does not create the potential to further divide either of the two parcels into more parcels than would have been otherwise possible,
 - c. There are no resulting violations of the Santa Monica Municipal Code;
3. Land conveyed to or from a public utility, or for land conveyed to a subsidiary of a public utility for conveyance to such a public utility for right-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map;
4. When the parcel map is waived as provided by Section 9.54.050(G), a plot map in a form as required by the City Engineer, and a certificate of compliance in accordance with Section 9.54.050(H) shall be required for lot line adjustments, mergers, certificates of compliance and parcel map waivers.

5. The voluntary merger of existing adjoining parcels as provided by Section 9.54.110.

9.54.030 Tentative Subdivision Maps

- A. **General.** The form and contents, submittal, and approval of tentative subdivision maps shall be governed by the provisions of this Section 9.54.030 and the Subdivision Map Act.
- B. **Form and contents.** The tentative subdivision map shall be prepared by a registered civil engineer and shall be clearly and legibly drawn on one sheet and contain not less than the following:
 1. A title which shall contain the subdivision number, subdivision name, and type of subdivision;
 2. Name and address of legal owner, subdivider, and person preparing the map (including registration number);
 3. Sufficient legal description to define the boundary of the proposed subdivision;
 4. Date, north arrow, scale and contour interval;
 5. Existing and proposed land use;
 6. A vicinity map showing roads, adjoining subdivisions, towns, creeks, railroads, and other data sufficient to locate the proposed subdivision and show its relation to the community;
 7. Existing topography of the proposed site and at least one hundred feet beyond its boundary, including but not limited to:
 - a. Existing contours at two feet intervals if the existing ground slope is less than ten percent and at not less than five feet intervals for existing ground slopes equal to or greater than ten percent. Contour intervals shall not be spread more than one hundred fifty feet apart. Existing contours shall be represented by dashed lines or by screened lines.
 - b. Type, circumference, and dripline of existing trees. Any trees proposed to be removed shall be so indicated.
 - c. The approximate location and outline of existing structures identified by type. Buildings to be removed shall be so marked.
 - d. The approximate location of all areas subject to inundation or storm water overflow and the location, width and direction of flow of each watercourse.
 - e. The location, pavement and right-of-way width, grade and name of existing streets or highway.
 - f. The widths, location and identity of all existing easements.
 - g. The location and size of existing sanitary sewers, water mains and storm drains. The approximate size of existing sewers and storm drains shall be indicated. The location of existing sewers and storm drains shall be indicated. The location of existing overhead utility lines on peripheral streets.
 - h. The approximate location of the 60, 65 and 70 CNEL (Community Noise Equivalent Level) contours, if any.

8. Proposed improvements to be shown shall include but not be limited to:
 - a. The location, grade, centering radius and arc length of curves, pavement and right-of-way width and name of all streets. Typical sections of all streets shall be shown.
 - b. The location and radius of all curb returns and cul-de-sacs.
 - c. The location, width, and purpose of all easements.
 - d. The angle of intersecting streets if such angle deviates from a right angle more than four degrees.
 - e. The approximate lot layout and the approximate dimensions of each lot and of each building site. Engineering data shall show the approximate finished grading of each lot, the preliminary design of all grading, the elevation of proposed building pads, the top and toe of cut and fill slopes to scale and the number of each lot.
 - f. Proposed contours at two feet intervals shall be shown if the existing ground slope is less than ten percent and not less than five feet intervals for existing ground slopes greater than or equal to ten percent. A separate grading plan may be submitted.
 - g. Proposed recreation sites, trails, and parks for private or public use.
 - h. Proposed commons areas to be dedicated to public open space.
 - i. The location and size of sanitary sewers, water mains or storm drains. Proposed slopes and approximate elevations of sanitary sewers and storm drains shall be indicated.
9. The name or names of any geologist or soils engineer whose services were required in the preparation of the design of the tentative map;
10. The source and date of existing contours;
11. All letter size shall be one-eighth inch minimum;
12. If the subdivider plans to develop the site as shown on the tentative map in units, then the subdivider shall show the proposed units and their proposed sequence of construction on the tentative map;
13. The Director may waive any of the foregoing tentative subdivision map requirements whenever he or she finds that the type of subdivision is such as not to necessitate compliance with these requirements, or that other circumstances justify such waiver. The Director may require other such drawings, data or other information as deemed necessary.

C. **Accompanying data and reports.** The tentative subdivision map shall be accompanied by the following data or reports:

1. **Title Report.** A preliminary title report, showing the legal owners at the time of filing the tentative subdivision map.
2. **Environmental Impact Study.** The various time limits set forth in this Chapter for taking action on tentative subdivision maps shall not be deemed to commence until the subdivision is found exempt or an initial study is completed and a negative declaration or environmental impact report, as appropriate, is prepared, processed and considered in accordance with the provisions of the California Environmental Quality Act. The subdivider shall provide such additional data and information and deposit and pay such fees as may be required for the preparation and processing of environmental review documents.

3. **Housing Element Compliance Plan.** A plan for complying with any requirements of the Housing Element.
4. Building Plans and Elevations.
5. Landscape Plan.
6. Condominium Specification Checklist.
7. CC & R'S.
8. Tenant Displacement List.
9. Tenants' Notice of Intent to Convert.
10. Notice of Intent to Convert.
11. Building Condition and History Report.
12. Conversion Report.
13. Energy Conservation Plan.
14. Application for Conditional Use Permit.
15. Radius Map, Mailing List.
16. **Preliminary Soil Report.** A preliminary soil report as required by Health and Safety Code Section 17953. The Building Officer may waive this requirement upon a determination that no preliminary analysis is necessary because of the knowledge of the Building Officer as to soil qualities of soil of the proposed subdivision or lot.
17. **Other Reports.** Any other data or reports deemed necessary by the Director.

D. Submittal and processing of tentative subdivision maps.

The tentative subdivision map shall be accepted for filing only when such map conforms to Section 9.54.030(B) and when all accompanying data or reports as required by Section 9.54.030(C) have been submitted and accepted by the Director. The Director shall accept or reject such maps for filing in writing within thirty days of the date of submittal. Any map which is rejected for filing shall specify the reasons for the rejection. The time periods for acting upon such maps shall commence from the date of the letter accepting the map for filing. The subdivider shall file with the Director the number of tentative maps that the Director deems necessary.

E. Approval. The tentative subdivision map shall be approved, conditionally approved, or denied in accordance with the procedures set forth in Subchapter 9.54.070.

F. Vesting tentative map.

1. A "vesting tentative map" is a tentative map as defined in this Chapter which shall have printed conspicuously on its face the words "Vesting Tentative Map" and which is processed in accordance with this Section.
2. Whenever a tentative map is required by this Chapter, a vesting tentative map may be filed instead. If a subdivider does not seek the rights conferred by a vesting tentative map, the filing of a vesting tentative map shall not be required as a prerequisite to any approval for any proposed subdivision, permit for construction, or work preparatory to construction.

3. A vesting tentative map shall be processed in the manner provided in Sections 9.54.030(D) and 9.54.030(E) of this Chapter. A vesting tentative map shall be filed in the same form and with the same content as provided in Sections 9.54.030(B) and 9.54.030(C) of this Chapter except that the words “Vesting Tentative Map” shall be conspicuously printed on the face thereon.
4. A vesting tentative map shall expire and be subject to the same extensions as apply to a tentative map as set forth in this Chapter.
5. The approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with those ordinances, policies and standards in effect as of the date the application for a vesting tentative map is determined to be complete, or as otherwise permitted by Government Code Section 66474.2. If Government Code Section 66474.2 is repealed, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved. Approval of a vesting tentative map shall in no way limit or diminish the authority of the City to deny or impose reasonable conditions in conjunction with subsequent approvals relating to the project provided the City applies those ordinances, policies and standards in effect at the time of approval of the vesting tentative map.
6. Notwithstanding subsection (5), the City may condition or deny a permit, approval, extension, or entitlement for use based upon ordinances, policies and standards enacted subsequent to the time the vesting tentative map is approved or conditionally approved if any of the following are determined:
 - a. A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.
 - b. The condition or denial is required in order to comply with State or Federal law.
7. The rights referred to in this Section shall expire if a final map is not approved prior to the expiration of the vesting tentative map. After the final map is approved, the rights referred to in this Section shall apply for the following time periods:
 - a. An initial time period of one year after recordation of the final map. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, this initial time period shall begin for each phase when the final map for that phase is recorded.
 - b. The initial time period provided in subsection (7)(a) shall be automatically extended by any time used by the City for processing a complete application for a grading permit or for design or architectural review, if the time to process application exceeds thirty days from the date a complete application is filed.
 - c. A subdivider may apply to the Planning Commission for a one-year extension at any time prior to the expiration of the initial time period provided by this Section. If the extension is denied, the subdivider may appeal that decision to the City Council within fifteen days.
 - d. If the subdivider submits a complete application for a building permit during the time period provided in this Section, the vested right to proceed shall be extended until the expiration of the building permit or any extension of that permit granted by the City.

8. Whenever a subdivider files a vesting tentative map for a subdivision whose intended development is inconsistent with the zoning ordinance in existence at that time, that inconsistency shall be noted on the map. The City shall deny such a vesting tentative map or approve it conditioned upon the subdivider obtaining the necessary change in the zoning ordinance to eliminate the inconsistency. If the change in the zoning ordinance is obtained, the approved or conditionally approved vesting tentative map shall confer the vested right to proceed with development in substantial compliance with the change in the zoning ordinance and the map as approved.
9. Notwithstanding any provision of this Section, a property owner or his or her designee may seek approvals or permits for development which departs from the ordinances, policies and standards described in subsection (5), the City may grant these approvals or issue these permits to the extent that the departures are authorized under applicable law.

9.54.040 Final Subdivision Maps

- A. **General.** The form, contents, accompanying data, and filing of the final subdivision map shall conform to the provisions of this Section 9.54.040 and the Subdivision Map Act. The final subdivision map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor.
- B. **Survey required.**
 1. An accurate and complete survey of the land to be subdivided shall be made by a registered civil engineer or licensed land surveyor. All monuments, property lines, centerlines of streets, alleys and easements adjoining or within the subdivision shall be tied into the survey. The allowable error of closure on any portion of the final map shall not exceed 1/10,000 for field closures and 1/20,000 for calculated closures.
 2. At the time of making the survey for the final subdivision map, the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Business and Professions Code Section 8771 so that another engineer or surveyor may readily retrace the survey. At least one exterior boundary line shall be monumented prior to recording the final map. Other monuments shall be set as required by the City Engineer.
- C. **Form.** The form of the final subdivision map shall conform to the Subdivision Map Act and as set forth below:
 1. The final subdivision map shall be legibly drawn, printed or reproduced by a process guaranteeing a permanent record of black on tracing cloth or polyester base film. Certificates, affidavits and acknowledgements maybe legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.
 2. The size of each sheet shall be eighteen by twenty-six inches. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch. The scale of the map shall be not less than one inch equals one hundred feet or as may be necessary to show all details clearly, and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown. When four or more sheets including the certificate sheets are used, a key sheet will be included.

3. All printing or lettering on the map shall be of one-eighth inch minimum height and of such shape and weight as to be readily legible on prints and other reproductions made from the original drawings.
 4. The final form of the final subdivision map shall be as approved by the City Engineer.
- D. **Contents.** The contents of the final subdivision map shall conform to the Subdivision Map Act and as set forth below:
1. **Boundary.** The boundary of the subdivision shall be designated by a heavy black line in such manner as not to obliterate figures or other data.
 2. **Title.** Each sheet shall have a title showing the subdivision number and name and location of the property being subdivided with reference to maps which have been previously recorded, or by reference to the plat of a United States Survey. The following words shall appear in the title, "In the City of Santa Monica."
 3. **Certificates.** The following certificates shall appear only once on the cover sheet.
 - a. **Owner's Certificate.** A certificate, signed and acknowledged by all parties having record title interest in the land subdivided, excepting those parties having rights-of-way, easements, other interests which cannot ripen into a fee, or other exceptions provided by the Subdivision Map Act, and consenting to the preparation and recordation of the final subdivision map and offering for dedication to the public certain specific parcels of land.
 - b. **Engineer's Certificate.** A certificate by the engineer or surveyor responsible for the survey and final subdivision map shall appear on the map. The certificate shall give the date of the survey, state that the survey and final subdivision map were made by or under the direction of the engineer or surveyor, and that the survey is true and complete as shown.
 - c. The certificate shall also state that all monuments are of the character and occupy the positions indicated, or that they will be set in such position on or before a specified later date. The certificate shall also state that the monuments are, or will be, sufficient to enable the survey to be retraced.
 - d. The certificate shall be in the form required by the Subdivision Map Act.
 - e. **City Engineer's Certificate.** A certificate by the City Engineer stating that the final subdivision map has been examined and that it is in accord with the tentative map and any approved alterations thereof, complies with the Subdivision Map Act and the provisions of the Chapter, and is technically correct. The City Engineer shall not execute such certification until receiving a report from the Director of Planning of compliance with all conditions of the tentative subdivision map. The certification shall be conditional on the City Council finding that all conditions of the tentative subdivision map have been complied with.
 - f. **City Clerk's Certificate.** A certificate for execution by the City Clerk stating the date and number of the resolution adopted by the City Council approving the final subdivision map and stating that the City Council accepted, accepted subject to improvement or rejected on behalf of the public, any real property offered for dedication for public use in conformity with the terms of the offer of dedication.
 - g. **County Recorder's Certificate.** A certificate to be executed by the County Recorder stating that the final subdivision map has been accepted for filing, that the

- final subdivision map has been examined and that it complies with the provisions of State laws and local ordinances governing the filing of final subdivision maps.
- h. The certificate shall show who requested the filing of the final subdivision map, the time and date the map was filed and the book and page where the map was filed.
 - i. **County Clerk's Certificate.** A certificate to be executed by the County Clerk stating that all taxes due have been paid or that a tax bond assuring the payment of all taxes which are a lien but not yet payable has been filed with the County.
4. **Scale, North Point and Basis of Bearings.** There must appear on each map sheet the scale, the north point and the basis of bearings in relation to a previously recorded final map, and the equation of the bearing of true north. The basis of bearings shall be approved by the City Engineer.
 5. **Linear, Angular and Radial Data.** Sufficient linear, angular, and radial data shall be shown to determine the bearings and lengths of monument lines, street centerlines, the boundary lines of the subdivision and of the boundary lines on every lot and parcel which is a part thereof. Length, radius and total central angle or radial bearings of all curves shall be shown. Ditto marks shall not be used in the dimensions and data shown on the final subdivision map.
 6. **Monuments.** The location and description of all existing and proposed monuments shall be shown. Standard City monuments shall be set at (or from off-sets as approved by the City Engineer) the following locations:
 - a. The intersection of street centerlines.
 - b. Beginning and end of curves in centerlines.
 - c. At other locations as may be required by the City Engineer.
 7. **Lot Numbers.** Lot numbers shall begin with the number 1 in each subdivision and shall continue consecutively with no omissions or duplications except where contiguous lands, under the same ownership, are being subdivided in successive units, in which event lot numbers may begin with the next consecutive number following the last number in the preceding unit. Each lot shall be shown entirely on one sheet of the final subdivision map, unless approved by the City Engineer.
 8. **City Boundaries.** City boundaries which cross or join the subdivision shall be clearly designated.
 9. **Street Names.** The names of all streets, alleys, or highways within or adjoining the subdivision shall be shown.
 10. **Easements.**
 - a. Easements for roads or streets, paths, storm water drainage, sanitary sewers or other public use as may be required, shall be dedicated to the public for acceptance by the City or other public agency, and the use shall be specified on the final subdivision map. If at the time the final subdivision map is approved, any streets, paths, alleys or storm drainage easements are not accepted by the City Council, the offer of dedication shall remain open and the City Council may, by resolution at any later

date, accept and open the streets, paths, alleys or storm drainage easements for public use, which acceptance shall be recorded in the office of the County Recorder.

- b. All easements of record shall be shown on the final subdivision map, together with the name of the grantee and sufficient recording data to identify the conveyance, e.g., recorder's serial number and date, or book and page of official records.
- c. Easements not disclosed by the records in the office of the County Recorder and found by the surveyor or engineer to be existing, shall be specifically designated on the final subdivision map, identifying the apparent dominant tenements for which the easements were created.
- d. The sidelines of all easements of record shall be shown by dashed lines on the final subdivision map with the widths, lengths and bearings of record. The width and location of all easements shall be approved by the City Engineer.

11. **Subdivision Improvement Agreements.** If, at the time of approval of the final map, any public improvements required pursuant to this Chapter have not been completed and accepted in accordance with the conditions of the tentative map, the subdivider shall enter into an agreement with the City to either complete the improvements at the subdividers expense or to create a special assessment for the financing and completion of such improvements. The City shall require a security guarantee for the completion of any such improvements.

12. For subdivisions of air space, an exploded isometric view of all air space lots shall be provided. Also section details, including vertical limits for all lots and public easements within the subdivision shall be furnished.

E. **Preliminary submittal for City approval.** The subdivider shall submit four sets of prints of the final subdivision map to the City Engineer for checking. The preliminary prints shall be accompanied by two copies of the following data, plans, reports and documents in a form as approved by the City Engineer:

- 1. **Improvement Plans.** Improvement plans as required by the Planning Commission or City Council.
- 2. **Title Report.** A title report showing the legal owners at the time of submittal of the final subdivision map.
- 3. **Improvement Bond Estimate.** The improvement bond estimate shall include all improvements within public rights-of-way, easements, or common areas and utility trench backfill as provided by the developer except for those utility facilities installed by a utility company under the jurisdiction of the California Public Utilities Commission.
- 4. **Deeds for Easements or Rights-of-way.** Deeds for easements or rights-of-way required for road or drainage purposes which have not been dedicated on the final subdivision map. Written evidence acceptable to the City in the form of rights of entry or permanent easements across private property outside of the subdivision permitting or granting access to perform necessary construction work and permitting the maintenance of the facility.
- 5. **Joint Use of Right-of-Way Agreement.** Agreements, acceptable to the City, executed by all owners of all utility and other easements within the proposed rights-of-way consenting to the dedication of the road or consenting to the joint use of the right-of-way, as may be required by the City for public use and convenience of the road shall be required. These

owners shall join in the dedication and subordinate their rights to the right of the public in the road.

6. **Traverse Closures.** Traverse closures for the boundary blocks, lots, easements, street centerlines and monument lines. The error of field closures in the traverse around the subdivision and around the interior lots or blocks shall not exceed one part in twenty thousand.
 7. **Hydrology and Hydraulic Calculations.** Complete hydrology and hydraulic calculations of all storm drains.
 8. **Organization Documents.** The submittal of the final subdivision map shall include the proposed Declaration of Covenants, Conditions and Restrictions, and all other organizational documents for the subdivision in a form as prescribed by Civil Code Section 1355.
 9. Any additional data, reports or information as required by the City Engineer. All documents shall be subject to review by the City Engineer and City Attorney.
- F. **Return to subdivider's engineer for corrections.** Upon completing the preliminary check the City Engineer shall note the required corrections on the preliminary prints, reports and data and return one set to the subdivider's engineer for revision.
- G. **Resubmittal.** The subdivider's engineer shall submit two (2) sets of the revised map, reports and data to the City Engineer. After checking the revisions, one set shall be returned to the subdivider's engineer marked approved as submitted, approved when corrected as noted or revise and resubmit.
- H. **Approval by the City Engineer and Planning Director.** Upon receipt of an approved print, the subdivider shall submit to the City Engineer the original tracing of the revised map, prepared in accordance with the Subdivision Map Act and this Chapter and corrected to its final form, and signed by all parties required by the Subdivision Map Act and this Chapter to execute the certificate on the map. The City Engineer and Director of Planning shall sign the appropriate certificates and transmit the original to the City Clerk.
- I. **Approval.** The final map shall be approved or denied in accordance with procedures set forth in Subchapter 9.54.080.

9.54.050 Tentative Parcel Maps

- A. **General.** The form and contents, submittal, and approval of tentative parcel maps shall conform to the provisions of this Section 9.54.050 and the Subdivision Map Act. The tentative parcel map shall be prepared by a registered civil engineer or licensed land surveyor.
- B. **Form.** The tentative parcel map shall be clearly and legibly drawn on one sheet. The scale shall be approved by the City Engineer and all lettering shall be one-eighth (1/8) inch minimum in height. The final form shall be approved by the City Engineer.
- C. **Content.** The tentative parcel map shall show the following information:
 1. Name and address of legal owner, subdivider, and the person preparing the map (including registration number). The engineer or surveyor responsible for the preparation of the map shall certify that all monuments are or will be set on or before a specified date.

2. Assessor's parcel number.
3. Date prepared, north arrow, scale and contour interval.
4. Existing and proposed land use.
5. Title.
6. A vicinity map, sufficient to show the relation to the local community.
7. Existing topography of the site and at least one hundred (100) feet from its boundary, including but not limited to:
 - a. Existing contours at two (2) foot intervals, if the existing ground slope is less than ten percent and not less than five (5) foot intervals for existing ground slopes greater than or equal to ten percent. Existing contours shall be represented by screened or dashed lines.
 - b. Type, circumference, and dripline of existing trees. Any trees proposed to be removed shall be so indicated.
 - c. The approximate location and outline of existing structures identified by type. Structures to be removed shall be so marked.
 - d. The approximate location of all areas subject to inundation or storm water overflow and the location, width and direction of flow of each watercourse.
 - e. The location, pavement, and right-of-way width, and grade and name of existing streets or highways.
 - f. Location and type of street improvements.
 - g. The location, size, and slope of existing storm drains. The location of existing overhead utility lines on peripheral streets.
 - h. The location, width, and identity of existing easements.
8. Any improvements proposed by the owner shall be shown.
9. If the site is to be graded, proposed contours shall be shown or on an approved grading plan.
10. The proposed lot layout and lot areas.
11. Proposed easements or rights-of-way.
12. The source and date of existing contours.
13. A preliminary report of title showing the current vested owner.
14. A soils and/or engineering geology report may be required by the City Engineer.

D. **Accompanying data and reports.** The tentative parcel map shall be accompanied by the following data or reports:

1. **Title Report.** A preliminary title report, showing the legal owners at the time of filing the tentative parcel map.
2. **Environmental Impact Study.** The various time limits set forth in this Chapter for taking action on tentative parcel maps shall not be deemed to commence until the parcel is found exempt or an initial study is completed and a negative declaration or environmental impact report, as appropriate, is prepared, processed and considered in accordance with the

provisions of the California Environmental Quality Act. The subdivider shall provide such additional data and information and deposit and pay such fees as may be required for the preparation and processing of environmental review documents.

3. **Housing Element Compliance Plan.** A plan for complying with any requirements of the Housing Element.
4. Building Plans and Elevations.
5. Landscape Plan.
6. Condominium Specification Checklist.
7. CC & R'S.
8. Tenant Displacement List.
9. Tenants' Notice of Intent to Convert.
10. Notice of Intent to Convert.
11. Building Condition and History Report.
12. Conversion Report.
13. Energy Conservation Plan.
14. Application for Conditional Use Permit.
15. Radius Map, Mailing List.
16. **Preliminary Soil Report.** A preliminary soil report as required by Health and Safety Code Section 17953. The Building Officer may waive this requirement upon a determination that no preliminary analysis is necessary because of the knowledge of the Building Officer as to soil qualities of soil of the proposed parcel or lot.
17. **Other Reports.** Any other data or reports deemed necessary by the Director of Planning.

E. **Submittal and processing of tentative parcel maps.**

The tentative parcel map shall be accepted for filing only when such map conforms to Section 9.54.050(C) and when all accompanying data or reports required by Section 9.54.050(D) have been submitted and accepted by the Director. The Director shall accept or reject such maps for filing within fifteen (15) days of the date of submittal. Any map which is rejected for filing shall specify the reasons for rejection. The time period for acting upon such maps shall commence from the date of the letter accepting the map for filing. The subdivider shall file with the Director the number of tentative parcel maps that the Director deems necessary.

F. **Approval.**

The tentative map shall be approved, conditionally approved, or denied in accordance with the procedures set forth in Subchapter 9.54.070.

G. **Waiver of parcel map.**

The Planning Commission may waive the requirements for a tentative and final parcel map when it is demonstrated that the waiver is consistent with the purpose of this Chapter and the General Plan.

No parcel map may be waived for a condominium, stock cooperative, community apartment project, or cooperative apartment, whether created by new construction or conversion. The decision of the Planning Commission shall not be appealable.

H. **Procedure for waiver of parcel maps.** The following procedure shall be followed for the waiver of a parcel map:

1. A subdivider shall submit a Request for Waiver of Parcel Map which shall set forth the manner in which the proposed division is consistent with the purpose of this Chapter and the General Plan.
2. A subdivider shall also submit a plot map of the proposed division which shall contain a detailed survey of all affected parcels. The content of the plot map shall be determined by the City Engineer.
3. The Director of Planning shall review the Request for Waiver of Parcel Map and shall set the matter for public hearing before the Planning Commission as provided in Section 9.54.070(A).
4. The Planning Commission shall approve, conditionally approve or deny the Request for Parcel Map Waiver after the contents of the plot map have been approved by the City Engineer.
5. If the Planning Commission approves or conditionally approves the Request for Parcel Map Waiver, a Certificate of Compliance shall be executed. The Certificate of Compliance shall identify the real property and shall state that the division thereof complies with applicable provisions of the Subdivision Map Act and this Chapter. Upon making such a determination the City shall cause the Certificate of Compliance to be filed for record with the County Recorder's Office.

9.54.060 Final Parcel Maps

A. **Final parcel maps.**

The form and contents, submittal, approval and filing of parcel maps shall conform to the provisions of this Section 9.54.060 and the Subdivision Map Act. The final parcel map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor.

B. **Survey required.**

An accurate and complete survey of the land to be subdivided shall be made by a registered civil engineer or licensed land surveyor. All monuments, property lines, centerlines of streets, alleys and easements adjoining or within the subdivision shall be tied into the survey. The allowable error of closure on any portion of the parcel map shall not exceed one part in ten thousand (1/10,000) for field closures and one part in twenty thousand (1/20,000) for calculated closures.

C. **Form and content.**

The form and content of the final parcel map shall conform to the requirements for final subdivision maps as specified by Sections 9.54.040(C) and 9.54.040(D) of this Chapter (except that any reference therein to a final subdivision map shall refer to a final parcel map). Lots shall be designated by letters commencing with "A".

D. **Preliminary submittal for city approval.** The subdivider shall submit four (4) sets of prints of the final parcel map to the City Engineer for checking. The preliminary prints shall be accompanied by

two (2) copies of the following data, plans, reports and documents in a form as approved by the City Engineer:

1. **Improvement Plans.** Improvement plans as required by the Planning Commission or City Council.
2. **Title Report.** A title report showing the legal owners at the time of submittal of the final parcel map.
3. **Improvement Bond Estimate.** The improvement bond estimate shall include all improvements within public rights-of-way, easements, or common areas and utility trench backfill as provided by the developer except for those utility facilities installed by a utility company under the jurisdiction of the California Public Utilities Commission.
4. **Deeds for Easements or Rights-of-Way.** Deeds for easements or rights-of-way required for road or drainage purposes which have not been dedicated on the final parcel map. Written evidence acceptable to the City in the form of rights of entry or permanent easements across private property outside of the parcel permitting or granting access to perform necessary construction work and permitting the maintenance of the facility.
5. **Joint Use of Right-of-Way Agreement.** Agreements, acceptable to the City, executed by all owners of all utility and other easements within the proposed rights-of-way consenting to the dedication of the road or consenting to the joint use of the right-of-way, as may be required by the City for public use and convenience of the road shall be required. These owners shall join in the dedication and subordinate their rights to the right of the public in the road.
6. **Traverse Closures.** Traverse closures for the boundary blocks, lots, easements, street centerlines and monument lines. The error of field closures in the traverse around the parcel and around the interior lots or blocks shall not exceed one part in twenty thousand (1/20,000).
7. **Hydrology and Hydraulic Calculations.** Complete hydrology and hydraulic calculations of all storm drains.
8. **Organization Documents.** The submittal of the final parcel map shall include the proposed Declaration of Covenants, Conditions and Restrictions, and all other organizational documents for the subdivision in a form as prescribed by Civil Code Section 1355.
9. Any additional data, reports or information as required by the City Engineer. All documents shall be subject to review by the City Engineer and City Attorney.

E. **Return to subdivider's engineer for corrections.**

Upon completing the preliminary check the City Engineer shall note the required corrections on the preliminary prints, reports and data and return one set to the subdivider's engineer for revision.

F. **Resubmittal.**

The subdivider's engineer shall submit two (2) sets of the revised map, reports and data to the City Engineer. After checking the revisions, one set shall be returned to the subdivider's engineer marked approved as submitted, approved when corrected as noted or revise and resubmit.

G. **Approval by the City Engineer and Planning Director.**

Upon receipt of an approved print, the subdivider shall submit to the City Engineer the original tracing of the revised map, prepared in accordance with the Subdivision Map Act and this Chapter and corrected to its final form, and signed by all parties required by the Subdivision Map Act and this Chapter to execute the certificate on the map. The City Engineer and Director shall sign the appropriate certificates and transmit the original to the City Clerk.

H. **Approval of final parcel map.**

A final parcel map shall be approved or denied in accordance with the procedures set forth in Subchapter 9.54.080.

9.54.070 Procedures for Approval for Tentative Maps

A. **Notice of public hearings.**

1. Upon receipt of a valid application and upon receipt of the report and recommendations for the proposed tentative map by the Director, the Secretary of the Planning Commission shall set the matter for public hearing. At least ten (10) calendar days before the public hearing, the Secretary shall cause notice to be given of the time, date and place of said hearing including a general explanation of the matter to be considered and a general description of the area affected, and the street address, if any, of the property involved. Notice shall be given as follows:
 - a. Notice shall be published at least once in a newspaper of general circulation, published and circulated in the City.
 - b. Notice shall be given by mail or delivery to all property owners and tenants, including businesses, corporations or other public or private entities, within three hundred (300) feet of the property which is the subject of the application.
 - c. In addition, in the case of a proposed conversion of residential real property to a condominium project, community apartment project or stock cooperative project, notice shall be given as required by Subdivision Map Act.
 - d. In the event that the application has been requested by a person other than the property owner as such property owner is shown on the last equalized assessment roll, notice shall be mailed to the property owner.
 - e. Notice shall be given by first class mail to any person who has filed a written request with the Secretary of the Planning Commission. Such a request may be submitted at any time during the calendar year and shall apply for the balance of such calendar year. The City may impose a reasonable fee on persons requesting such notice for the purpose of recovering the cost of such mailing.

The failure to receive notice by any person entitled thereto by law or by this Chapter does not affect the validity of any action taken pursuant to the procedures set forth in this Chapter.

B. **Planning Commission action.**

The Planning Commission shall approve, conditionally approve or deny the tentative map and shall report its decision to the City Council and the subdivider within fifty (50) days after the tentative map has been accepted for filing. Any report or recommendation on a tentative map by the staff shall be in writing and a copy thereof served on the subdivider and on each tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community

apartment project or stock cooperative project, at least three (3) days prior to any hearing or action on such map by such advisory agency or legislative body.

C. Approval.

1. In approving or conditionally approving the tentative map, the Planning Commission shall find that the proposed subdivision, together with its provisions for its design and improvements, is consistent with applicable general or specific plans adopted by the City of Santa Monica.
2. If no action is taken by the Planning Commission within the required time limit, as specified in the Subdivision Map Act, the tentative map as filed shall be deemed to be approved, insofar as it complies with other applicable provisions of the Subdivision Map Act, this Chapter or other City ordinances, and it shall be the duty of the City Clerk to certify the approval. A tentative map which is deemed approved by the failure of the Planning Commission to act within the required time limit is subject to an appeal within ten (10) days of the date the tentative map is deemed approved.

D. Denial.

The tentative map may be denied by the Planning Commission on any of the grounds provided by City ordinances or the Subdivision Map Act. The Planning Commission shall deny approval of the tentative map if it makes any of the following findings:

1. The proposed map is not consistent with applicable general and specific plans as specified in Government Code Section 65451.
2. The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
3. The site is not physically suitable for the type of development.
4. The site is not physically suitable for the proposed density of development.
5. The design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. The design of the subdivision or the type of improvement is likely to cause serious public health problems.
7. The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements for access or for use will be provided, and that these will be substantially equivalent to ones previous acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.
8. The proposed subdivision is inconsistent with any ordinance or law of the City of Santa Monica.

E. **Report to City Council.**

If a tentative map is approved or conditionally approved, including approval by failure of the Planning Commission to act within the time required by law, the Director shall make a written report to the City Council within five (5) days of such approval.

F. **Extension of time for Planning Commission or City Council action.**

The time limits set forth above for acting on the tentative map may be extended by mutual consent of the subdivider and the Planning Commission or the City Council.

G. **Appeal.**

1. **By Subdivider.** If the subdivider disagrees with any action by the Planning Commission with respect to the tentative map, the subdivider may, within ten (10) days of such decision file an appeal in writing with the City Clerk. The City Council shall consider the appeal within thirty (30) days after the date of filing the appeal, unless the subdivider consents to a continuance. This appeal shall be a public hearing after notice has been given pursuant to Section 9.54.070(A). In addition, notice shall be given to the subdivider and the Planning Commission. Upon conclusion of the public hearing, the City Council shall within ten (10) days declare its findings. The City Council may sustain, modify, reject or overrule any recommendations or rulings of the Planning Commission and may make such findings as are not inconsistent with the provisions of this Chapter or the Subdivision Map Act.
2. **By Interested Persons.** Any interested person, including a member of the Planning Commission or City Council, may file a complaint in writing with the City Council concerning such decision. Any such complaint shall be filed with the City Clerk within ten (10) days after the action which is the subject of the complaint. No complaint may be filed after the ten (10) day period. Within ten (10) days, or the next regular City Council meeting following the filing of the complaint, whichever is later, the City Council may, at its discretion, reject the complaint or set the matter for hearing. If the City Council rejects the complaint, the complainant shall be notified of such action. If the matter is set for public hearing, a public hearing shall be held within thirty (30) days after filing of the complaint pursuant to the procedures contained in Section 9.54.070(A) with additional notice being given to each person filing a complaint. For purposes of this Chapter, interested person includes any resident of the City of Santa Monica.

9.54.080 Procedures for Approval of Final Maps

A. **Approval by City Council.**

1. The final map together with the subdivision improvement agreement, shall be placed on the City Council agenda for its approval. The City Council shall consider the final map for approval at its next regular meeting after the meeting at which it receives the map prepared in accordance with this Chapter. The City Council shall have approved any subdivision improvement agreement before approving the final map.
2. If the subdivision improvement agreement and final map are approved by the City Council, it shall instruct the City Manager to execute the agreement on behalf of the City. If the subdivision improvement agreement and/or final map does not meet the requirements of the Subdivision Map Act or this Chapter, the City Council shall deny the final map without prejudice to the subdivider resubmitting a final map in compliance with the Subdivider Map Act and this Chapter.

B. Denial by the City Council.

The City Council shall not deny approval of the final map if it finds that the final map is in substantial compliance with the previously approved tentative map.

C. Filing with the County Recorder.

Upon approval of the final map by the City Council and receipt of the improvement security by the City Engineer, the City Clerk shall execute the appropriate certificate on the certificate sheet and forward the map, or have an authorized agent forward the map, to the Clerk of the County Board of Supervisors for transmittal to the County Recorder.

D. Submittal by units.

Multiple final maps relating to an approved or conditionally approved tentative map may be filed prior to the expiration of the tentative map; provided, however, that the subdivider, at the time the tentative map is filed, informs the Director of Planning of the subdivider's intention to file multiple final maps on the tentative map. In providing such notice the subdivider shall not be required to define the number or configuration of the proposed multiple maps. However, the Planning Commission shall approve the sequence of map approvals. The filing of a final map on a portion of an approved or conditionally approved tentative map shall not invalidate any part of the tentative map. Each final map which constitutes a part, or unit, of the approved tentative map shall have a separate subdivision number. The subdivision improvement agreement to be executed by the subdivider shall provide for the construction of such improvements as may be required to constitute a logical and orderly development of the whole subdivision by units.

9.54.090 Expiration, Extensions, and Amendments

A. Expiration.

1. An approved or conditionally approved tentative map shall expire twenty-four (24) months after its approval or conditional approval.
2. The period of time specified in Subdivision (a) shall not include any period of time specified in Government Code Section 66452.6(b).
3. The period of time specified in Subdivision (a) shall not include any period of time during which a lawsuit has been filed and is pending in a court of competent jurisdiction involving the approval or conditional approval of a tentative map if a stay of the time period is approved pursuant to Section 9.54.090(C) of this Chapter.
4. The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map of all or any portion of the real property included within the tentative map shall be filed with the legislative body pursuant to Government Code Section 66457 without first processing a new tentative map. Once a timely filing is made, subsequent actions may lawfully occur after the date of expiration of the tentative map.

B. Extensions.

1. **Application.** Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires may be

extended by the Planning Commission or City Council on appeal for a period or periods not exceeding a total of three (3) years.

2. **Request by Subdivider.** The subdivider or his engineer may request an extension of the expiration date of the approved or conditionally approved tentative map by written application to the Director of Planning. The application shall be filed not less than sixty (60) days before the map is to expire and shall state the reasons for requesting the extension.
3. **Planning Commission Action.** The Director of Planning shall review the request and submit the application for the extension, together with a report, to the Planning Commission for approval or denial. A copy of the Director of Planning's report shall be forwarded to the subdivider prior to the Planning Commission meeting on the extension. The resolution adopted by the Planning Commission approving an extension shall specify the new expiration date of the tentative map. The Planning Commission shall act upon the request within thirty (30) days of the filing of the written application.
4. **Time Limit of Extension.** The approved extension shall not exceed three (3) years.
5. **Appeal.** The subdivider or any interested person may appeal any action of the Planning Commission on the extension to the City Council within ten (10) days of such action. The City Council shall act upon the appeal within twenty (20) days.

C. **Stay of expiration.**

The subdivider may apply to the City Council for a stay of the expiration of a tentative subdivision or parcel map provided an application is filed pursuant to this section within ten (10) days of the service of the initial petition or complaint in a lawsuit involving the approval or conditional approval of a tentative subdivision or parcel map. Upon receipt of a valid application, a public hearing will be conducted pursuant to Section 9.54.070(A) within forty (40) days and the City Council shall either stay the expiration of the tentative map for up to five (5) years or deny the requested stay.

D. **Amendments to approved tentative map.** Minor changes in the tentative map may be approved by the Director of Planning upon application by the subdivider or on the initiative of the Director, provided:

1. No lots, units or building sites are added.
2. Such changes are consistent with the intent and spirit of the original tentative map approval.
3. There are no resulting violations of the Santa Monica Municipal Code. Any revision shall be approved by the Director of Planning and the City Engineer. The amendment shall be indicated on the approved map and certified by the Director of Planning and the City Engineer. Amendments of the tentative map other than minor shall be presented to the Planning Commission for approval. Processing shall be in accordance with Subchapter 9.54.070. Any approved amendment shall not alter the expiration date of the tentative map.

9.54.100 Standards for Decisions

A. **Nondiscrimination.** All tentative maps shall be conditioned upon the Declaration of Covenants, Conditions, and Restrictions containing a nondiscrimination clause in substantially the following form:

“No unit owner shall execute or file for record any instrument which imposes a restriction upon the sale, leasing or occupancy of his or her unit on the basis of sex, race, color, religion, ancestry, national origin, age, pregnancy, marital status, family composition, or the potential or actual occupancy of minor children. A condominium association shall not discriminate on the basis of sex, race, color,

religion, ancestry, national origin, age, pregnancy, marital status, family composition, or the potential or actual occupancy of minor children.”

- B. **Air space subdivision.** For air space subdivisions, minimum lot size, lot dimension and lot area requirements, parking requirements, setback requirements, building density limitations, building envelope limitations, yard requirements, landscaping requirements, inclusionary housing requirements, Building Code and other technical code requirements, and other standards affecting the development of the property shall be determined for the air space lots as if all lots in the air space subdivision were merged into the same lot. All tentative maps crating air space lots, other than condominiums, community apartments, or cooperative apartments, shall be conditioned upon the recordation, prior to final map approval, of deed restrictions, or other instruments in a form acceptable to the City Attorney, which:
1. Ensure that the air space lots have access to appropriate public rights-of-way by means of one or more easements or other entitlements to use, in a form satisfactory to the City Engineer; and
 2. Restrict each lot so that minimum lot size, dimension and area requirements, parking requirements, setback requirements, building density limitations, building envelope limitations, yard requirements, landscaping requirements, inclusionary housing requirements, Building Code and other technical code requirements, and other standards affecting the development of the property are determined for the air space lots as if all lots in the air space subdivision were merged into the same lot.

9.54.110 Voluntary Merger

- A. **Applicability.** Pursuant to the provisions of California Government Code Section 66499.20.3, a merger and certificate of merger of existing adjoining parcels of real property under common ownership may be authorized by the City Engineer and filed for record by the County Recorder only where the City Engineer makes all of the following findings:
1. The merger will not affect any fees, grants, easements, agreements, conditions, dedications, offers to dedicate or security provided in connection with any approvals of divisions of real property or lot line adjustments;
 2. The boundaries of the parcels to be merged are well-defined in existing recorded documents or filed maps and were legally created or have certificates of compliance issued on them;
 3. The merger will not alter the exterior boundary of the parcels to be merged;
 4. The document used to effect the merger contains an accurate description of the exterior boundaries of the resulting parcel;
 5. All parties having any record title interest in the real property affected have consented to the merger upon a form and in a manner approved by the City Engineer, excepting all those interests that are excepted from the requirement to consent to the preparation and recordation of Final Maps under the provisions of California Government Code Section 66436 and according to the terms, provisions, reservations and restrictions provided therein for such consent;
 6. All necessary fees and requirements, including a fee for recording the document have been provided.

7. The merger shall not create a parcel that exceeds the lot consolidation size limit established in Section 9.21.030(B)(1) for the zone district in which the parcel is created.
- B. **Concurrent Filing of Record of Survey.** Where a record of survey is deemed to be necessary by the City Engineer or the applicant in order to monument and define the boundaries of the merged parcel, such record of survey, otherwise in compliance with all requirements, may be filed at the same time as the merger and certificate of merger.
- C. **Merger of Parcels.** The filing of the merger and certificate of merger for record shall constitute a merger of the separate parcels into one parcel for the purpose of the Subdivision Map Act and local ordinances enacted pursuant thereto, and the parcels shall thereafter be treated in all respects as a single parcel.
- D. **Recording of Merger Without Approval Prohibited.** No person shall record a document merging separate legal parcels into a single legal parcel for the purposes of the Subdivision Map Act and local Ordinances enacted pursuant thereto except in conformity with the provisions of this chapter.

9.54.120 Fees

The City Council shall establish by resolution such fees as may be required for the review and processing of a proposal for voluntary merger.

9.54.130 Certificates of Compliance and Conditional Certificates of Compliance

- A. **Purpose and Intent.**
 1. **Certificates of Compliance.** This Division provides procedures for the filing, processing, and approval or denial of applications for Certificates of Compliance, consistent with the requirements of Chapter 9.54 (Land Division) of the Santa Monica Municipal Code, and other applicable provisions of the City Code, including predecessor ordinances, and the requirements of the California Subdivision Map Act, as applicable to the specific application.
 2. **Conditional Certificates of Compliance.** This Division provides procedures for the filing, processing, and approval, approval with conditions or denial of applications for Conditional Certificates of Compliance, consistent with the policies and standards of the General Plan, Divisions I through VI of Article 9 of the Santa Monica Municipal Code, including predecessor ordinances, and the requirements of the California Subdivision Map Act, as applicable to the specific application.
- B. **Application Filing and Review.**
 1. **Who may apply.** Any person owning real property, or a purchaser of the property in a contract of sale of the property, may request a Certificate of Compliance or Conditional Certificate of Compliance.
 2. **Certificate of Compliance.** An application for a Certificate of Compliance shall be filed with the City Engineer.
 3. **Conditional Certificate of Compliance.** Upon the City Engineer's determination that the Certificate to be recorded is required to be a Conditional Certificate of Compliance, an application for a Conditional Certificate of Compliance shall be filed with the Planning and Community Development Department.
- C. **Contents of application.**
 1. **Certificate of Compliance.** An application for a Certificate of Compliance shall be filed on a City Engineer's application form, together with required fees and/or deposits, and all other

information and materials as identified in the City Engineer's application for a Certificate of Compliance.

2. **Conditional Certificate of Compliance.** An application for a Conditional Certificate of Compliance shall be filed with the Planning and Community Development Department in compliance with the following:
 - a. **Application contents.** Each application for a Conditional Certificate of Compliance together with required fees and/or deposits, shall be filed with the Planning Director on a Planning and Community Development Department application form, together with required fees and/or deposits, and all other information and materials as identified in the Planning and Community Development Department application for the Conditional Certificate of Compliance. Submittal requirements may be increased or waived on a project specific basis as determined necessary or appropriate by the Planning Director.
 - b. **Application fees.**
 - i. *Timing of payment.* Required fees and/or deposits shall be paid at the time of filing the application with the Planning Director and no processing shall commence until the fee/deposit is paid.
 - ii. *Refunds and withdrawals.* The required application fees and/or deposits cover City costs for public hearings, mailings, staff time, and the other activities involved in processing applications. Therefore, a refund due to a denial is not required. In the case of an expiration or withdrawal of an application, the Planning Director shall have the discretion to authorize a partial refund based upon the pro-rated costs to-date and the status of the application at the time of expiration or withdrawal.
 - c. **Filing and acceptance of an application.** An application is considered to be filed after it has been accepted for processing by the Planning and Development Department and required fees and/or deposits have been paid. The Planning Director shall review each application for receipt of all submittal requirements and accuracy prior to acceptance of the application. The Planning Director's acceptance of an application for processing shall be based on the Planning and Development Department's required application contents (see Subsection C.2.a, above).
 - d. **Environmental information.** After an application has been accepted as complete, the Planning Director may require the applicant to submit additional information needed for the environmental review of the project in compliance with the requirements of the California Environmental Quality Act and its Guidelines.
 - e. **Referral of application.** At the discretion of the Planning Director, or where otherwise required by the Santa Monica Municipal Code, or State or Federal law, an application may be referred to any County department or public agency that may be affected by or have an interest in the application.
 - f. **Right of entry/inspection.** Every applicant seeking a Conditional Certificate of Compliance in compliance with this Chapter shall allow City staff involved in the

review of the application access to any premises or property which is the subject of the application at all reasonable times.

- g. **Coastal Development Permit requirement.** If an application for a Conditional Certificate of Compliance is submitted for property located in the Coastal Zone, then an application for a Coastal Development Permit shall be processed and approved by the appropriate decision-maker before the Conditional Certificate of Compliance application may be approved and filed for record with the County Recorder.

D. Processing of Application.

1. **In general.** After receipt of an application for a Certificate of Compliance, the County Surveyor shall review all available information and determine whether the real property was divided in compliance with Chapter 9.54 (Land Division) of the City Code, and other applicable provisions of the City Code, including predecessor ordinances, and the requirements of the California Subdivision Map Act, as applicable to the specific application.
2. **Certificates of Compliance.** If the City Engineer determines that the real property was divided in compliance consistent with the requirements of Chapter 9.54 (Land Division) of the Santa Monica Municipal Code, and other applicable provisions of the City Code, including predecessor ordinances, and the requirements of the California Subdivision Map Act, as applicable to the specific application, then the City Engineer shall cause a Certificate of Compliance to be filed for record with the County Recorder in compliance with Subsection F.1, below.
3. **Conditional Certificates of Compliance.**
 - a. If the City Engineer determines that the real property was not divided in compliance with Subsection (A), above, then the City Engineer shall direct that an application for a Conditional Certificate of Compliance be filed with the Planning and Community Development Department.
 - b. After receipt of an application for a Conditional Certificate of Compliance, the Planning and Development Department shall review the application in compliance with the requirements of the California Environmental Quality Act.
 - c. The Director shall be the decision-maker and shall hold at least one noticed public hearing on the requested Conditional Certificate of Compliance and Coastal Development Permit, if applicable, and either approve or conditionally approve the request.
 - d. The determination of the Director is final subject to appeal in compliance with Section 9.37.130 (Appeals).
 - e. At the time that the Conditional Certificate of Compliance is approved or conditionally approved, the decision-maker may impose conditions as provided by Subsection E (Conditions of Approval), below.

E. Conditions of approval.

1. **Owners are original subdividers.** If the owners of the real property for which a Conditional Certificate of Compliance is being requested are the original subdividers, then the decision-maker, in compliance with the Subdivision Map Act, may impose any conditions that would be applicable to a current subdivision of the property, regardless of when the property was divided.

2. **Owners are not original subdividers.** If the owners of the real property for which a Conditional Certificate of Compliance is being requested had no responsibility or are not “successors in interest” of the subdivision that created the real property, then the decision-maker may only impose conditions that would have been applicable to the subdivision at the time the real property was acquired by the current owners.
 3. **Compliance with conditions.** The conditions of approval shall be required to be fulfilled and implemented prior to the subsequent issuance of a permit or other grant of approval for development of the property.
- F. **Completion of process.**
1. **Certificate of Compliance.** The City Engineer shall file for record a Certificate of Compliance with the County Recorder. The Certificate shall identify the property, and serve as notice to the property owner or purchaser who applied for the certificate, a grantee of the owner, or any subsequent transferee or assignee of the property that the division complies with the requirements of Chapter 9.54 (Land Division) of the Santa Monica Municipal Code, and other applicable provisions of the City Code, including predecessor ordinances, and the requirements of the California Subdivision Map Act, as applicable.
 2. **Conditional Certificate of Compliance.** Following expiration of the applicable appeal period of the final action by the decision-maker, the County Surveyor shall file for record a Conditional Certificate of Compliance with the County Recorder. The Certificate shall identify the property, and serve as notice to the property owner or purchaser who applied for the certificate, a grantee of the owner, or any subsequent transferee or assignee of the property that the fulfillment and implementation of the conditions adopted in compliance with Subsection D, above, shall be required before subsequent issuance of a permit or other approval for the development of the property.
- G. **Effective date of certificate.** A Certificate of Compliance or Conditional Certificate of Compliance shall not become effective until the document has been recorded by the County Recorder.

Chapter 9.55 Architectural Review

Sections:

9.55.010	Purpose
9.55.020	Definitions
9.55.030	Architectural Review Board—Membership
9.55.040	Guidelines and Standards
9.55.050	Guidelines and Standards—Submission for approval—Maintenance and availability of Copies
9.55.060	Appointment and Term of Office
9.55.070	Rules
9.55.080	Officers, Election of Officers
9.55.090	Secretary
9.55.100	Meetings
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9.55.120	Jurisdiction
9.55.130	Procedure for Review
9.55.140	Criteria
9.55.150	Site plans
9.55.160	Appeals
9.55.170	Architectural Review District Boundaries
9.55.180	Posting of Property

9.55.010 Purpose

The purpose of this Chapter is to promote the public health, safety and general welfare by establishing such procedures and providing such regulations as are deemed necessary to preserve existing areas of natural beauty, cultural importance; to assure that buildings, structures, signs or other developments are in good taste, good design, harmonious with surrounding developments and in general contribute to the preservation of Santa Monica's reputation as a place of beauty, spaciousness and quality; to prevent the development of structures or uses which are not of acceptable exterior design or appearance, are of inferior quality or likely to have a depreciating effect on the local environment or surrounding area by reason of appearance or value; to eliminate conditions, structures, signs or uses which by reason of their effect tend to degrade the health, safety or general welfare of the community; and provide a continuing source of programs and means of improving the City's overall appearance.

9.55.020 Definitions

For purposes of this Chapter, the following definitions shall have the meanings defined herein:

- A. **Chapter** — Shall refer to Chapter 9.55, Article 9, Santa Monica Municipal Code.
- B. **Board** — Shall mean the Architectural Review Board.
- C. **Commission** — Shall mean the Santa Monica Planning Commission.
- D. **Council** — Shall mean the Santa Monica City Council.
- E. **Director** — Shall mean the Director of Planning & Community Development or his/her designee.

- F. **District** — Shall mean an officially designated architectural review district.
- G. **Member** — Shall mean a voting member of the Architectural Review Board.
- H. **Review Authority** — Shall mean the appropriate decision maker as determined by the Zoning Ordinance.

9.55.030 Architectural Review Board—Membership

An Architectural Review Board is hereby established which shall consist of seven members. At least two of the members shall be professional architects. Other members of the board shall be persons who, as a result of their training, experience, and attainments, are qualified to analyze and interpret architectural and environmental trends and information, to appraise resource uses in light of the policies set forth in this Article, to be responsive to the social, aesthetic, recreational and cultural needs of the community. Other expertise such as conservation, recreation, design, landscaping, the arts, urban planning, cultural-historical preservation, and ecological and environmental science shall, insofar as practicable, be represented on the Board. The Landmarks Commission may select one of its members to provide active liaison with the Board when the Board is considering additions to or modifications of historic resources. The Commissioner chosen shall neither have a vote on the Board nor be eligible to be its chairperson.

9.55.040 Guidelines and Standards

The Architectural Review Board may, by resolution, establish guidelines and standards for its evaluation of proposed developments within an architectural review district, to supplement the criteria set forth in this Chapter. Such guidelines and standards shall reflect and effectuate the purposes expressed by Section 9.55.010 of this Code and shall include, but need not be limited to, consideration of the following elements:

- A. The integrity of neighborhood environments:
- B. Existing local, social, aesthetic, recreational and cultural facilities, designs and patterns within the district;
- C. The disparate elements of neighborhood communities within a district and the architectural relationship of adjoining neighborhood communities; and
- D. General patterns and standards of architectural development within the entire district.

9.55.050 Guidelines and Standards—Submission for Approval—Maintenance and Availability of Copies

The guidelines and standards established by the Architectural Review Board shall be submitted for approval to the Commission after adoption by the Board. Copies of the effective, current guidelines and standards shall be maintained and made available to the public by the Department of Planning & Community Development.

9.55.060 Appointment and Term of Office

The members of the Board shall be subject to removal by motion of the City Council by at least five (5) affirmative votes. Except as otherwise provided herein, the members of the Board shall serve for a term of four (4) years, commencing on July 1 and until their respective successors are appointed and qualified.

The members first appointed to the Board shall so classify themselves by lot that the term of one of their number shall expire on the next succeeding July 1, and the balance of the Board shall be paired by lot and serve terms to such an extent as is necessary in order that the terms of at least one such pair shall expire in each succeeding year. Thereafter, any appointment to fill an unexpired term shall be for such unexpired period.

9.55.070 Rules

The Board shall adopt rules and regulations for the conduct of its business. Four (4) voting members shall constitute a quorum. The affirmative or negative vote of a majority of the entire membership of the Board shall be necessary for it to take action. No item shall be included on the consent calendar of the Board's agenda unless all members agree to the inclusion of such item. If any member of the Board objects to scheduling a particular application on the Board calendar, said application shall be removed from the consent calendar and set for public hearing, and the Board shall be granted an additional fifteen days to execute action on the application.

9.55.080 Officers, Election of Officers

As soon as practicable following the appointment or reappointment of members each year, the Board shall organize and elect from its own membership a Chairman and a Chairman Pro Tem.

9.55.090 Secretary

The Director shall serve or appoint staff to serve as the official secretary to the Committee. The records of all proceedings and basis for all findings shall be available to the Council and to the public.

9.55.100 Meetings

The committee shall meet at established intervals, at least twice each month, or as otherwise determined by the Board, on regularly scheduled dates. Meetings shall be arranged in order to process applications within the time required by this Ordinance.

9.55.110 Architectural Review Districts

The Architectural Review Board upon its own motion may recommend to the City Council, after the review and comment of the Planning Commission thereon, any commercial, industrial, residential, or other area, or a combination of areas within the corporate boundaries of the City for inclusion in an architectural review district. The City Council, upon such recommendation, or upon its own motion, may establish one or more architectural review districts by ordinance which may include any or all portions of the City.

9.55.120 Jurisdiction

A. Unless plans, elevations, landscaping and proposed signs for building or structures or alterations thereto have been approved by the Board or on appeal by the Commission, no building permit shall be issued for any building, structure or other development of property or appurtenances thereto, on any property situated in an established architectural review district, except that the Board under authority of Section 9.55.070 of this Chapter, may, by resolution, authorize the building officer or other official to approve applications for building permits for minor or insignificant development of property which would not defeat the purposes and objectives of this chapter.

The Commission shall also have the authority to undertake all review and approvals authorized by the Zoning Ordinance.

B. No completed project which receives the Board's approval prior to the issuance of a building permit for the construction thereof, shall receive a certificate of occupancy or final building inspection

approval until the Director certifies that such construction has complied with the conditions and restrictions, if any, imposed by the Board or the Commission, and that the final construction is in conformity with the plans approved by the Board and/or the Commission.

- C. Plans or proposals which require a Development Review Permit shall first be considered by the Board for a recommendation to the Planning Commission on the appropriateness of proposed urban design elements, including, but not limited to: siting, massing, scale, circulation, general relationship to adjacent structures and the adjacent street.
- D. Following a determination by the Commission or applicable Review Authority, plans or proposals shall thereafter, when appropriate, be considered by the Board which shall be authorized to approve, conditionally approve or disapprove exterior elevations, landscaping, signs and general appearance and impose such conditions as it believes reasonable and necessary and as would not be in conflict with any of the conditions or requirements of the Commission or applicable Review Authority.

9.55.130 Procedure for Review

- A. Preliminary sketches of the design of a proposed structure or alteration may be submitted to the Department of Planning & Community Development for informal review so that an applicant may be informed of Board policies prior to preparing working drawings.
- B. The applicant for a building permit when subject to requirements of this article shall submit to the Department of Planning & Community Development an application for Board approval, which shall include, but be limited to a site plan as defined by Section 9.55.150 and exterior elevations and such other data as will assist the Board in evaluating the proposed building or structure. Exterior elevation drawings shall be available when Board agendas are published.
- C. Preliminary plans and elevations shall be drawn to scale and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that it will conform to the provisions of this Chapter. The first sheet of each set of plans shall give the street address of the work and the name and address of the owner and the person who prepared them. The plot plan shall conform to Section 9.55.150. Work not thus presented may be rejected by the Director.
- D. The application shall be processed pursuant to the Permit Streamlining Act, Government Code Section 65920 et seq. or any successor legislation there.

9.55.140 Criteria

- A. The Board may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction after consideration of whether the following criteria are complied with:
 - 1. The plan for the proposed building or structure is expressive of good taste, good design, and in general contributes to the image of Santa Monica as a place of beauty, creativity and individuality.
 - 2. The proposed building or structure is not of inferior quality such as to cause the nature of the local neighborhood or environment to materially depreciate in appearance and value.
 - 3. The proposed design of the building or structure is compatible with developments on land in the general area.

4. The proposed development is in conformity with the effective guidelines and standards adopted pursuant to this chapter and all other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.
- B. If the Board finds that the above criteria are complied with, the application shall be approved. Conditions may be imposed when the proposed building or structure does not comply with the above criteria and shall be such to bring such building or structure into conformity therewith. If an application is disapproved, the Board shall detail in its findings the criteria which are not complied with or the guidelines which are violated, or both. Any action taken by the Board in regard to a proposed development shall include findings, and be reduced to writing, signed by the Chairman, and a copy thereof shall be given to the applicant, in person, or by United States mail, upon request.
- C. A decision or order of the Board shall not become effective until the expiration of ten (10) days after the date upon which a ruling has been made.
- D. The criteria established herein may be changed, from time to time, by ordinance, upon request of the Board, or upon motion of the City Council.

9.55.150 Site Plans

- A. A site plan shall be drawn to scale and shall indicate the following sufficiently for consideration of urban design, visual, and safety factors:
 1. Dimensions and orientation of the parcel.
 2. Location of buildings and structures both existing and proposed.
 3. Location of off-street parking and loading facilities.
 4. Location of points of entry and exit for motor vehicles and internal circulation factors.
 5. Location of walls and fences and the indication of their height and the materials of their construction.
 6. Indication of exterior lighting standards and devices adequate to review possible hazards and disturbances to the public and adjacent properties.
 7. Location and size of exterior signs and outdoor advertising.
 8. A preliminary landscaping plan.
 9. Such other architectural and engineering data as may be required to permit necessary findings that the provisions of this chapter are being complied with.

9.55.160 Appeals

The applicant or any interested person may appeal to the Commission from any ruling of the Board made pursuant to this Chapter. Further, any member of the Commission may request a review by the Commission of any ruling of the Board. Notice of any appeal from the ruling of the Board must be filed within ten (10) days of the date that such ruling is made, and must be accompanied, except in the case of a review by request of a member of the Commission, by the fee established by the Santa Monica Municipal Code. When such an appeal is made from a ruling of the Board, the Commission shall set a hearing date within thirty (30) days of the receipt of said notice of appeal. The Commission shall hear the appeal at the earliest practical date. The Commission shall decide the appeal within thirty (30) days after said hearing and shall base its decision on the evidence submitted to it at said hearing, and upon the record from the Board and such other records as may exist in the case. The decision of the Commission upon such appeal, relative to any matter within the jurisdiction of the Board, shall be final.

9.55.170 Architectural Review District Boundaries

Pursuant to Section 9.55.110 of the Santa Monica Municipal Code, an architectural review district is hereby established. Said architectural review district shall be composed of all commercial, industrial, and residential areas within the corporate boundaries of the City, with the exception of those areas designated as R1 Districts by Article 9 of the Santa Monica Municipal Code, and those structures for which a certificate of appropriateness is obtained from the Landmarks Commission (or City Council on appeal) pursuant to Chapter 9.56 of the Santa Monica Municipal Code. Noncontributing structures located within Historic Districts shall be subject to architectural review unless otherwise exempted by the ordinance that establishes procedures for the alteration of structures within the Historic District. Single-family structures, including accessory structures, in all districts in the City except for those structures located in the area described in Section 9.08.030(A)(2) are also exempt from Architectural Review Board district boundaries.

9.55.180 Posting of Property

Within ten days after an application for architectural review has been filed, the applicant shall post the property with a preprinted sign or signs prepared by the City measuring thirty inches by forty inches in size. Except as set forth in this Section, the posting shall be in accordance with the requirements as to content, location(s), number of signs, height, lettering and posting period as established by the Director to ensure adequate notice. The application shall not be considered complete unless the site has been posted pursuant to this Section. Sign and landscape applications and applications subject to administrative approval are exempt from the requirements of this Section.

Chapter 9.56 Landmarks and Historic Districts

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9.56.270	Preservation Incentives
9.56.280	CEQA Time Extensions
9.56.290	The Third Street Neighborhood Historic District
9.56.300	The Bay Craftsman Cluster Historic District

9.56.010 Title

This Chapter shall be known as the Landmark and Historic District Ordinance of the City of Santa Monica.

9.56.020 Purpose

It is hereby declared as a matter of public policy that the purpose of this Chapter is to promote the public health, safety and general welfare by establishing such procedures and providing such regulations as are deemed necessary to:

- A. Protect improvements and areas which represent elements of the City's cultural, social, economic, political and architectural history.

- B. Safeguard the City's historic, aesthetic and cultural heritage as embodied and reflected in such improvements and areas.
- C. Foster civic pride in the beauty and noble accomplishments of the past.
- D. Protect and enhance the City's aesthetic and historic attractions to residents, tourists, visitors and others, thereby serving as a stimulus and support to business and industry.
- E. Promote the use of Landmarks, Structures of Merit and Historic Districts for the education, pleasure and welfare of the people of this City.

9.56.030 Definitions

As used in this Chapter, the following words and phrases shall have the meaning set forth herein, unless it is apparent from the context that a different meaning is intended:

- A. **Certificate of Appropriateness:** A certificate issued by the Landmarks Commission approving such plans, specifications, statements of work, and any other information which is reasonably required by the Landmarks Commission to make a decision on any proposed alteration, restoration, construction, removal, relocation or demolition, in whole or in part, of or to a Structure of Merit, Landmark or Landmark Parcel, or to a building or structure within a Historic District.
- B. **City-Designated Historic Resource:** Any existing building or structure that is designated by the City as a Landmark, Structure of Merit, or a Contributor to a Designated Historic District.
- C. **Contributing Building or Structure:** A building or structure which has been identified by the Landmarks Commission as one which contributes to the designation of an area as a Historic District.
- D. **Commission.** The Landmarks Commission.
- E. **Department.** The Department of Planning & Community Development.
- F. **Director.** The Director of the Department of Planning & Community Development or his/her designee.
- G. **Exterior Features:** The architectural style, design, general arrangement, components and natural features or all of the outer surfaces of an improvement, including, but not limited to, the kind, color and texture of the building material, the type and style of all windows, doors, lights, signs, walls, fences and other fixtures appurtenant to such improvement, and the natural form and appearance of, but not by way of limitation, any grade, rock, body of water, stream, tree, plant, shrub, road, path, walkway, plaza, fountain, sculpture or other form of natural or artificial landscaping.
- H. **Historic District:** Any geographic area or noncontiguous grouping of thematically related properties which the City Council has designated as and determined to be appropriate for historical preservation pursuant to the provisions of this Chapter.
- I. **Improvement:** Any building, structure, place, site, work of art, landscape feature, plantlife, life-form, scenic condition or other object constituting a physical betterment of real property, or any part of such betterment.
- J. **Landmark:** Any improvement which has been designated as and determined to be appropriate for historical preservation by the Landmarks Commission, or by the City Council on appeal, pursuant to the provisions of this Chapter.

- K. **Landmark Parcel:** Any portion of real property, the location and boundaries as defined and described by the Landmarks Commission, upon which a Landmark is situated, which is determined by the Landmarks Commission as requiring control and regulation to preserve, maintain, protect or safeguard the Landmark.
- L. **Secretary of Interior Standards:** The Secretary of the Interior Standards for Treatment of Historic Properties published by the U.S. Department of the Interior found at 36 C.F.R. § 68.3 as it may be amended from time to time.
- M. **Structure of Merit:** Any improvement which has been designated as and determined to be appropriate for official recognition by the Landmarks Commission pursuant to the provisions of this Chapter.

9.56.040 Landmarks Commission

A Landmarks Commission is hereby established which shall consist of seven members appointed by the City Council, all of whom shall be residents of the City over eighteen years of age. Of the seven members, at least one shall be a registered architect, at least one shall be a person with demonstrated interest and knowledge, to the highest extent practicable, of local history, at least one shall have a graduate degree in architectural history or have demonstrated interest, knowledge and practical or professional experience to the highest extent practicable of architectural history and at least one shall be a California real estate licensee. The Director, or his or her designated representative, shall act as the Secretary of the Commission and shall maintain a record of all resolutions, proceedings, and actions of the Commission.

9.56.050 Vacancies

In the event of a vacancy occurring during the term of a member of the Landmarks Commission, the City Council shall make an interim appointment to fill the unexpired term of such member, and where such member is required to have special qualifications pursuant to Section 9.56.040, such vacancy shall be filled by interim appointment with a person possessing such qualifications.

9.56.060 Powers

In addition to any other powers set forth in this Chapter or in the Zoning Ordinance, the Landmarks Commission shall have the power to:

- A. Designate Structures of Merit, Landmarks and Landmark Parcels, and to make any preliminary or supplemental designations, determinations or decisions, as additions thereto, in order to effectuate the purposes of this Chapter. Except as provided in Section 9.56.110, the designation of any improvement as a Structure of Merit, Landmark, or Contributing Building or Structure shall only include the exterior features of the improvement and shall not include any portion of its interior space.
- B. Conduct studies and evaluations of applications requesting the designation of a Historic District, make determinations and recommendations as such appropriateness for consideration of such applications, and make any preliminary or supplemental designations, determinations or decisions, as additions thereto, in order to effectuate the purposes of this Chapter.
- C. Regulate and control the alteration, restoration, construction, removal, relocation or demolition, in whole or in part, of or to a Structure of Merit, a Landmark or Landmark Parcel, or of or to a building or structure within a Historic District, and make any preliminary or supplemental designations, determinations, decisions, as additions thereto, in order to effectuate the purposes of this Chapter.

- D. Adopt, promulgate, amend, and rescind, from time to time, such rules and regulations as it may deem necessary to effectuate the purposes of this Chapter.
- E. Maintain a current listing and description of designated structures of merit, landmarks and historic districts.
- F. Provide for a suitable sign, plaque or other marker, at public or private expense, on or near a Landmark or Historic District, indicating that the Landmark or Historic District has been so designated. The sign, plaque or other marker shall contain information and data deemed appropriate by the Commission, and the placement of such shall be mandatory in the case of a landmark held open to the public use, and shall be at the discretion of the owner of the landmark in the case of a landmark not held open to the public use.
- G. Certify and/or ratify applicable environmental documents, or when acting in an advisory capacity only, recommend certification or ratification of environmental documents, in accordance with the California Environmental Quality Act or the National Environmental Policy Act.
- H. Evaluate and comment upon proposals and environmental reviews pending before other public agencies affecting the physical development, historic preservation and urban design in the City.

9.56.070 Jurisdiction

Unless a certificate of appropriateness has been issued by the Landmarks Commission, or by the City Council upon appeal, or unless an express exemption as provided for in this Chapter specifically applies, any alteration, restoration, construction, removal, relocation, or demolition, in whole or in part, of or to a Structure of Merit, Landmark or Landmark Parcel, or of or to a building or structure within a Historic District is prohibited, and no permit authorizing any such alteration, restoration, construction, removal, relocation or demolition shall be granted by any Department of the City.

9.56.080 Structure of Merit Criteria

For the purposes of this Chapter, an improvement may be designated a Structure of Merit if the Landmarks Commission determines that it merits official recognition because it has one of the following characteristics:

- A. The structure has been identified in the City's Historic Resources Inventory.
- B. The structure is a minimum of 50 years of age and meets one of the following criteria:
 - 1. The structure is a unique or rare example of an architectural design, detail or historical type.
 - 2. The structure is representative of a style in the City that is no longer prevalent.
 - 3. The structure contributes to a potential Historic District.

9.56.090 Structure of Merit Designation Procedure

Structures of Merit shall be designated by the Landmarks Commission in accordance with the following procedure:

- A. Except as limited by 9.25.040(E), any person may request the designation of an improvement as a Structure of Merit by properly filing with the Director an application for such designation on a form furnished by the Department. Additionally, the Commission may file an application for the designation of a Structure of Merit on its own motion. Within thirty days of filing a Structure of

Merit designation application, the property owner and tenants of the subject property shall be notified of the application filing.

- B. Upon determination that an application for designation of an improvement as a structure of merit is complete, removal or demolition, in whole or in part, of or to a proposed Structure of Merit is prohibited, and no permit issued by any City Department, Board or Commission including, but not limited to, a conditional use permit, a tentative tract map, or tentative parcel map permit, a development review permit, any Zoning Conformance permit, architectural review, rent control permit, or building permit, authorizing any such removal or demolition shall be granted while any action on the application is pending.
- C. The Director shall conduct an evaluation of the proposed designation and shall make a recommendation to the Commission as to whether the structure merits such designation. A public hearing to determine whether the structure merits such designation shall be scheduled before the Landmarks Commission within ninety days of the determination that the application is complete.
- D. Not more than twenty days and not less than ten days prior to the date scheduled for a public hearing, notice of the date, time, place, and purpose thereof shall be given by at least one publication in a daily newspaper of general circulation, and shall be mailed to the applicant, owner of the improvement, and to all owners and occupants of all real property within three hundred feet of the exterior boundaries of the lot or lots on which a proposed Structure of Merit is situated, using for this purpose the names and addresses of such owners as are shown on the records of the Los Angeles County Assessor. The failure to send notice by mail to any such real property owner where the address of such owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed designation. The Commission may also give such other notice as it may deem desirable and practicable.
- E. No later than ninety days from the determination that the application is complete, the Commission shall approve, in whole or in part, or disapprove the application for the designation of a Structure of Merit. If the Commission fails to take action on the application for the designation of a Structure of Merit at the conclusion of the public hearing, the application for such designation shall be deemed disapproved, and it shall be the duty of the Director to certify such disapproval.
- F. The decision of the Commission shall be in writing and shall state the findings of fact and reasons relied upon to reach the decision, and such decision shall be filed with the Director.
- G. Upon the rendering of a decision to designate a Structure of Merit, the owner of the designated Structure of Merit shall be given written notification of such designation by the Commission, using for this purpose the name and address of such owner as is shown in the records of the Los Angeles County Assessor.
- H. Subject to other provisions of this Section and Section 9.56.180 of this Chapter, a decision of the Commission to designate a Structure of Merit shall be in full force and effect from and after the date of the rendering of such decision by the Commission.
- I. The Commission shall have the power, after a public hearing, to amend, modify, or rescind any decision to designate a Structure of Merit and to make any preliminary or supplemental designations, determinations or decisions, as additions thereto.
- J. The Commission shall determine the instances in which cases scheduled for public hearing may be continued or taken under advisement. In such instances, no new notice need be given of the further hearing date, provided such date is announced at the scheduled public hearing.
- K. Whenever an application for the designation of a Structure of Merit has been disapproved or deemed disapproved by the Commission, no application which contains the same or substantially the same

information as the one which has been disapproved shall be resubmitted to or reconsidered by the Commission or City Council within a period of five years from the effective date of the final action upon such prior application. However, if significant new information is available, the City Council, upon recommendation from the Landmarks Commission, may waive the time limit by resolution and permit a new application to be filed. In addition, an application by the owner of the improvement proposed for Structure of Merit designation may be resubmitted or reconsidered notwithstanding said five year time period.

- L. If an improvement is designated as a Structure of Merit because the improvement contributes to a potential Historic District, this designation shall remain in full force and effect only if within ninety days from the date of designation, either by the Landmarks Commission or by the City Council on appeal, an application for designation of an Historic District has been filed pursuant to Section 9.56.130 which would include the Structure of Merit within its area. If an Historic District application is timely filed, the Structure of Merit designation shall remain in full force and effect during the Historic District designation process. If an application for designation of an Historic District is not timely filed or an Historic District is not designated in accordance with Section 9.56.130, then the Structure of Merit designation shall be automatically nullified without any action required by the Commission.

9.56.100 Landmark or Historic District Designation Criteria

- A. For purposes of this Chapter, the Landmarks Commission may approve the landmark designation of a structure, improvement, natural feature or an object if it finds that it meets one or more of the following criteria:
 - 1. It exemplifies, symbolizes, or manifests elements of the cultural, social, economic, political or architectural history of the City.
 - 2. It has aesthetic or artistic interest or value, or other noteworthy interest or value.
 - 3. It is identified with historic personages or with important events in local, state or national history.
 - 4. It embodies distinguishing architectural characteristics valuable to a study of a period, style, method of construction, or the use of indigenous materials or craftsmanship, or is a unique or rare example of an architectural design, detail or historical type valuable to such a study.
 - 5. It is a significant or a representative example of the work or product of a notable builder, designer or architect.
 - 6. It has a unique location, a singular physical characteristic, or is an established and familiar visual feature of a neighborhood, community or the City.
- B. For the purposes of this Chapter, a geographic area or a noncontiguous grouping of thematically related properties may be designated a Historic District if the City Council finds that such area meets one of the following criteria:
 - 1. Any of the criteria identified in Section 9.56.100(A)(1) through (6).
 - 2. It is a noncontiguous grouping of thematically related properties or a definable area possessing a concentration of historic, scenic or thematic sites, which contribute to each other and are unified aesthetically by plan, physical development or architectural quality.

3. It reflects significant geographical patterns, including those associated with different eras of settlement and growth, particular transportation modes, or distinctive examples of park or community planning.
4. It has a unique location, a singular physical characteristic, or is an established and familiar visual feature of a neighborhood, community or the City.

9.56.110 Public Spaces

For the purpose of this Chapter, any interior space regularly open to the general public, including, but not limited to, a lobby area may be included in the landmark designation of a structure or structures if the Landmarks Commission, or the City Council upon appeal, finds that such public spaces meet one or more of the criteria listed under Section 9.56.100.

9.56.120 Landmark Designation Procedure

Landmarks shall be designated by the Landmarks Commission in accordance with the following procedure:

- A. Except as limited by 9.25.040(E), any person may request the designation of an improvement as a Landmark by filing a complete application for such designation with the Department on a form furnished by the Department. Additionally, the Commission may file an application for the designation of a Landmark on its own motion. Within thirty days of filing a landmark designation application, the property owner and tenants of the subject property shall be notified of the filing of such application.
- B. Upon the filing of an application for designation of an improvement as a Landmark, any alteration, restoration, construction, removal, relocation or demolition, in whole or in part, of or to a proposed Landmark or Landmark Parcel is prohibited. No permit shall be issued by any City Department, board or commission, including, but not limited to, a conditional use permit, a tentative tract map or tentative parcel map permit, a development review permit, any Zoning Conformance permit, Architectural Review Board approval, certificate of appropriateness permit, rent control permit, or building permit, which would authorize any such alteration, restoration, construction, removal, relocation or demolition until a final determination on the application is rendered by the Commission, or the City Council on appeal.
- C. The Director shall conduct an evaluation of the proposed designation and shall make a recommendation to the Commission as to whether the improvement merits designation. A public hearing to determine whether the improvement merits designation shall be scheduled before the Landmarks Commission within sixty-five days of the determination that the application is complete. The owner of the improvement may agree to extend the time period for the Commission to hold the public hearing on the application.
- D. Not more than twenty days and not less than ten days prior to the date scheduled for a public hearing, notice of the date, time, place and purpose thereof shall be given by at least one publication in a daily newspaper of general circulation, and shall be mailed to the applicant, the owner of the improvement, all owners and residential and commercial tenants of all real property within three hundred feet of the exterior boundaries of the lot or lots on which a proposed Landmark is situated, and to residential and commercial tenants of the subject property, using for this purpose the names and addresses of such owners as are shown on the records of the Los Angeles County Assessor. The address of the residential and commercial tenants shall be determined by visual site inspection or other reasonably accurate means. The failure to send notice by mail to any such real property owner where the address of such owner is not a matter of public record shall not invalidate any proceedings

in connection with the proposed designation. The Commission may also give such other notice as it may deem desirable and practicable.

- E. At the conclusion of the public hearing, or any continuation thereof, the Commission shall approve, in whole or in part, or disapprove the application for the designation of a Landmark, and may define and describe an appropriate Landmark Parcel. Any continued public hearing must be completed within sixty-five days from the date set for the initial public hearing. If the Commission fails to take action on the application for the designation of a Landmark within the sixty-five day time period, the application for such designation shall be deemed disapproved. The owner of the improvement may agree to extend the time period for the Commission to hold and conclude the public hearing on the application.
- F. The Commission shall have the power, after a public hearing, whether at the time it renders such decision to designate a Landmark or at any time thereafter, to specify the nature of any alteration, restoration, construction, removal, relocation or demolition of or to a Landmark or Landmark Parcel which may be performed without the prior issuance of a certificate of appropriateness pursuant to this Chapter. The Commission shall also have the power, after a public hearing, to amend, modify or rescind any decision to designate a Landmark or Landmark Parcel and any specifications made pursuant to this subsection. The Commission shall further have the power to make any preliminary or supplemental designations, determinations or decisions, as additions to its designation determinations.
- G. Subject to other provisions of this Section and Section 9.56.180 of this Chapter, a decision of the Commission to designate a Landmark shall be in full force and effect from and after the date of the rendering of such decision by the Commission.
- H. Within thirty-five days after the decision has been rendered, the Commission shall approve a statement of official actions which shall include:
 - 1. A statement of the applicable criteria and standards against which the application for designation was assessed.
 - 2. A statement of the facts found that establish compliance or non-compliance with each applicable criteria and standards.
 - 3. The reasons for a determination to approve or deny the application.
 - 4. The decision to deny or to approve with or without conditions and subject to compliance with applicable standards.
- I. The official owner of the designated Landmark shall be provided a copy of the statement of official action after Commission approval using for this purpose the name and address of such owner as is shown in the records of the Los Angeles County Assessor.
- J. Whenever an application for the designation of a Landmark has been disapproved or deemed disapproved by the Commission, or by the City Council on appeal, no new application which contains the same or substantially the same information shall be filed within a period of five years from final action on the prior application. However, if significant new information is available, the Landmarks Commission may waive the time limit by resolution and permit a new application to be filed. In addition, an application of the owner of the subject improvement proposed for Landmark designation may be resubmitted or reconsidered notwithstanding the five year time period.

9.56.130 Historic District Designation Procedure

Historic Districts shall be designated by the City Council in accordance with the following procedure:

- A. Any person may request the designation of an area as a Historic District by properly filing with the Director of Planning an application for such designation on a form furnished by the Planning Department. Additionally, the Landmarks Commission may file an application for the designation of a Historic District on its own motion.
- B. No later than sixty days after the application for the designation of a Historic District is determined to be complete, City staff shall conduct a public meeting to discuss the potential District designation, including but not limited to, the designation process, the effect of designation on future property development, and the benefits of designation. The Landmarks Commission may request that City staff conduct this public meeting prior to the Landmark Commission's determination to file an application on its own motion. No more than twenty days and not less than ten days prior to the date scheduled for the public meeting, notice of the date, time, place, and purpose thereof shall be given by at least one publication in a daily newspaper of general circulation, and shall be mailed to the applicant, and to all owners and occupants of all real property within the potential Historic District.
- C. Upon determination by City staff that an application for designation of an Historic District is complete, any alteration, restoration, construction, removal, relocation or demolition, in whole or in part, of or to a building or structure within a proposed Historic District is prohibited, and no permit issued by any City Department, board or commission including a conditional use permit, a tentative tract map or parcel map permit, a final tract map or parcel map permit, a development review permit, any Zoning Conformance permit, architectural review permit, rent control permit, or building permit authorizing any such alteration, restoration, construction, removal, relocation or demolition shall be granted while a public hearing or any appeal related thereto is pending.
- D. Any person subject to subdivision (C) of this Section may apply to the Director, and to the Landmarks Commission, on appeal, for an exception. Exceptions may be granted for repairs or alterations which do not involve any detrimental change or modification to the exterior of the structure in question or for actions which are necessary to remedy emergency conditions determined to be dangerous to life, health or property.
- E. The Director shall conduct a preliminary evaluation of the proposed designation and shall make a recommendation to the Commission as to the appropriateness and qualification of the application for consideration by the Commission.
- F. A hearing to determine whether to recommend to the City Council that the application for the designation of a Historic District be approved, in whole or in part, or disapproved shall be scheduled before the Commission within one hundred eighty days after the application has been determined to be complete but no sooner than forty-five days after the public meeting held pursuant to subsection (B) of this Section.
- G. Not more than twenty days and not less than ten days prior to the date scheduled for such public hearing, notice of the date, time, place and purpose thereof shall be given by at least one publication in a daily newspaper of general circulation, and shall be mailed to the applicant, owners of all real property within the proposed Historic District and to the owners and residents of all real property within three hundred feet of the exterior boundary of the Historic District, using for this purpose the names and addresses of such owners as are shown on the records of the Los Angeles County Assessor. The failure to send notice by mail to any such real property owner where the address of such owner is not a matter of public record shall not invalidate any proceedings in connection with

the proposed designation. The Commission may also give such other notice as it may deem desirable and practicable.

- H. At the conclusion of a public hearing, or any continuation thereof, but in no case more than forty-five days from the date set for the initial public hearing, the Commission shall recommend to the City Council the approval, in whole or in part, or disapproval of the application for the designation of a Historic District, and shall forward such recommendation to the City Council stating in writing the findings of fact and reasons relied upon in reaching such a recommendation. If the Commission fails to take action on the application for the designation of a Historic District within the forty-five day time period, the application for such designation shall be deemed disapproved, and it shall be the duty of the Director to certify such disapproval.
- I. Within forty-five days from the date the Landmarks Commission renders a recommendation on the Historic District application, a public hearing shall be scheduled before the City Council. The same notice requirements set forth in subsection (G) of this Section shall apply to the hearing before the City Council. At the conclusion of the public hearing, or any continuation thereof, but in no case more than forty-five days from the date set for the initial public hearing, the City Council shall by ordinance approve, in whole or in part, the application for the designation of the Historic District, or shall by motion disapprove the application in its entirety. If the City Council fails to take action on the application for the designation of a Historic District within the forty-five day time period, the application for such designation shall be deemed disapproved, and it shall be the duty of the City Clerk to certify such disapproval.
- J. The decision of the City Council to approve the application for the designation of a Historic District, in whole or in part, by ordinance, or to disapprove the application in its entirety by motion, shall be in writing and shall state the findings of fact and reasons relied upon to reach the decision, and such decision shall be filed with the City Clerk.
- K. The City Council shall by ordinance have the power, after a public hearing, whether at the time it renders a decision to designate a Historic District or at any time thereafter, to specify the nature of any alteration, restoration, construction, removal, relocation or demolition of or to a building or structure within a Historic District which may be performed without the prior issuance of a certificate of appropriateness pursuant to this Chapter. The City Council shall by ordinance also have the power after a public hearing to amend, modify or rescind any specification made pursuant to the provisions of this subsection.
- L. Upon the rendering of such decision to designate a Historic District, the owners of all real property within the designated Historic District shall be given written notification of such designation by the City Council, using for this purpose the names and addresses of such owners as are shown in the records of the Los Angeles County Assessor.
- M. Subject to other provisions of this Section 9.56.130, a decision of the City Council to designate a Historic District shall be in full force and effect from and after the effective date of the ordinance approving, in whole or in part, the application for the designation of a Historic District.
- N. The City Council shall by ordinance have the power, after a public hearing, to amend, modify or rescind any decision to designate a Historic District and to make any preliminary or supplemental designations, determinations or decisions, as additions thereto. The Commission shall have the power to forward the recommendations of the Commission to the City Council on its own motion or at the direction of the City Council.

- O. The City Council shall determine the instances in which cases scheduled for public hearing may be continued or taken under advisement. In such instances, no new notice need be given of the further hearing date, provided such date is announced at the scheduled public hearing.
- P. Whenever an application for the designation of a Historic District has been disapproved or deemed disapproved by the Commission or the City Council, no application which contains the same or substantially the same information as the one which has been disapproved shall be resubmitted to or reconsidered by the Commission or City Council within a period of five years from the effective date of the final action upon such prior application. However, if significant new information is available, the City Council, upon recommendation from the Landmarks Commission, may waive the time limit by resolution and permit a new application to be filed. In addition, an application of all owners of the majority of parcels within the subject area proposed for Historic District designation, may be resubmitted or reconsidered notwithstanding said five year time period.

9.56.140 Alterations and Demolitions: Criteria for Issuance of a Certificate of Appropriateness

For purposes of this Chapter, the Landmarks Commission, or the City Council on appeal, shall issue a certificate of appropriateness for any proposed alteration, restoration, construction, removal, relocation, demolition, in whole or in part, of or to a Landmark or Landmark Parcel, or of or to a Structure of Merit if the Structure of Merit is subject to a deed restriction pursuant to Section 9.43.100 G9, or of or to a building or structure within a Historic District if it makes a determination in accordance with any one or more of the following criteria.

- A. In the case of any proposed alteration, restoration, removal or relocation, in whole or in part, of or to a Landmark or to a Landmark Parcel or upon a parcel that contains a City-designated Historic Resource subject to a deed restriction pursuant to Section 9.43.100(G)(9), the proposed work would not detrimentally change, destroy or adversely affect any exterior feature of the Landmark or Landmark Parcel upon which such work is to be done.
- B. In the case of any proposed alteration, restoration, construction, removal or relocation, in whole or in part, of or to a building or structure within a Historic District, the proposed work would not be incompatible with the exterior features of other improvements within the Historic District, not adversely affect the character of the Historic District for which such Historic District was designated, or not be inconsistent with such further standards as may be embodied in the ordinance designating such Historic District. For any proposed work to any building or structure whose exterior features are not already compatible with the exterior features of other improvements within the Historic District, reasonable effort shall be made to produce compatibility, and in no event shall there be a greater deviation from compatibility.
- C. In the case of any proposed construction of a new improvement upon a Landmark Parcel or upon a parcel that contains a City-designated Historic Resource subject to a deed restriction pursuant to Section 9.43.100(G)(9), the exterior features of such new improvement would not adversely affect and not be disharmonious with the exterior features of other existing improvements situated upon such Landmark Parcel.
- D. The applicant has obtained a certificate of economic hardship in accordance with Section 9.56.160.
- E. The Commission makes both of the following findings:
 - 1. That the structure does not embody distinguishing architectural characteristics valuable to a study of a period, style, method of construction or the use of indigenous materials or craftsmanship and does not display such aesthetic or artistic quality that it would not

reasonably meet the criteria for designation as one of the following: National Historic Landmark, National Register of Historic Places, California Registered Historical Landmark, or California Point of Historical Interest.

2. That the conversion of the structure into a new use permitted by right under current zoning or with a conditional use permit, rehabilitation, or some other alternative for preserving the structure, including relocation within the City, is not feasible.
- F. In the case of any proposed alteration, restoration, removal or relocation, in whole or in part, to interior public space incorporated in a Landmark designation pursuant to Section 9.56.110, the proposed work would not detrimentally change, destroy or adversely affect any interior feature of the Landmark structure.
 - G. The Secretary of Interior's Standards shall be used by the Landmarks Commission in evaluating any proposed alteration, restoration, or construction, in whole or in part, of or to a Landmark, Landmark Parcel, or to a Contributing Building or Structure within a Historic District.
 - H. Notwithstanding subsections (A) through (F) of this Section, a City-designated Historic Resource protected by a deed restriction pursuant to Section 9.43.100(G)(9) shall not be relocated, removed, or demolished in contravention of the deed restriction.

9.56.150 Certificate of Appropriateness for Structures of Merit

- A. Except as provided in Section 9.56.140, a certificate of appropriateness shall not be required for the alteration, restoration, construction or relocation of a Structure of Merit. However, the Architectural Review Board or the Planning Commission shall take into consideration the fact that the building has been designated a Structure of Merit in reviewing any permit concerning such structure.
- B. Application for a certificate of appropriateness for the demolition of a Structure of Merit shall be made on a form furnished by the Department. An application shall be processed in accordance with the same procedures set forth in Sections 9.56.170 and 9.56.180 of this Code and shall be reviewed in accordance with the standards set forth in Section 9.56.140.
- C. In an effort to agree to a means of historically preserving a Structure of Merit proposed for demolition, the Landmarks Commission shall have the following powers:
 1. During a one hundred and eighty day time period commencing from proper filing of an application for certificate of appropriateness, the Commission may negotiate with the owner of a Structure of Merit, or with any other parties, in an effort to agree to a means of historically preserving the designated property. The negotiations may include, but are not limited to, acquisition by gift, purchase, exchange, condemnation or otherwise of the Structure of Merit.
 2. Notwithstanding any of the foregoing, the Commission shall have the power to extend the required one hundred and eighty day time period to a duration not to exceed a three hundred and sixty day time period in any case where the Commission determines that such an extension is necessary or appropriate for the continued historical preservation of a Structure of Merit.
- D. Notwithstanding subsection C of this Section, a Structure of Merit shall not be demolished in contravention of a deed restriction recorded pursuant to Section 9.43.100.

9.56.160 Certificate of Economic Hardship

- A. Application for a certificate of economic hardship shall be made on a form furnished by the Department. An application shall be processed in accordance with the same procedures set forth in Sections 9.56.170 and 9.56.180 of this Code.
- B. The Landmarks Commission may solicit expert testimony or require that the applicant for a certificate of economic hardship make submissions concerning any or all of the following information before it makes a determination on the application:
 - 1. Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the recommendations of the Landmarks Commission for changes necessary for the issuance of a certificate of appropriateness. In connection with any such estimate, rehabilitation costs which are the result of the property owner's intentional or negligent failure to maintain the designated landmark or property in good repair shall not be considered by the Landmarks Commission in its determination of whether the property may yield a reasonable return to the owner.
 - 2. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
 - 3. Estimated market value of the property in its current condition; estimated market value after completion of the proposed construction, alteration, demolition or removal; estimated market value after any changes recommended by the Landmarks Commission; and, in the case of a proposed demolition, estimated market value after renovation of the existing property for continued use.
 - 4. In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.
 - 5. Amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased, and any terms of financing between the seller and buyer.
 - 6. If the property is income-producing, the annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
 - 7. If the property is not income-producing, projections of the annual gross income which could be obtained from the property in its current condition, in its rehabilitated condition, or under such conditions that the Landmarks Commission may specify.
 - 8. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years.
 - 9. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property.
 - 10. Any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years.
 - 11. Assessed value of the property according to the two most recent assessments.
 - 12. Real estate taxes for the previous two years.

13. Form of ownership or operation of the property, whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture or other.
 14. Any other information considered necessary by the Landmarks Commission to a determination as to whether the property does yield or may yield a reasonable return to the owners.
- C. In considering an application for a certificate of economic hardship, the Commission shall consider all relevant factors. In order to grant a certificate of economic hardship, the Landmarks Commission must make a finding that without approval of the proposed demolition or remodeling, all reasonable use of or return from a designated landmark or property within a Historic District will be denied a property owner. In the case of a proposed demolition, the Landmarks Commission must make a finding that the designated landmark cannot be remodeled or rehabilitated in a manner which would allow a reasonable use of or return from such landmark or property to a property owner.
- D. Upon a finding by the Commission that without approval of the proposed work, all reasonable use of or return from a designated landmark or property within a historic district will be denied a property owner, then the application shall be delayed for a period not to exceed one hundred twenty days. During this period of delay, the Commission shall investigate plans and make recommendations to the City Council to allow for a reasonable use of, or return from, the property, or to otherwise preserve the subject property. Such plans and recommendations may include, but are not limited to, provisions for relocating the structure, a relaxation of the provisions of the ordinance, a reduction in real property taxes, financial assistance, building code modifications and/or changes in zoning regulations.
- E. If, by the end of this one hundred twenty day period, the Commission has found that without approval of the proposed work, the property cannot be put to a reasonable use or the owner cannot obtain a reasonable economic return therefrom, then the Commission shall issue a certificate of economic hardship approving the proposed work. If the Commission finds otherwise, it shall deny the application for a certificate of economic hardship and notify the applicant by mail of the final denial.

9.56.170 Certificate of Appropriateness/Certificate of Economic Hardship Procedure

An application for a certificate of appropriateness or an application for a certificate of economic hardship approving any proposed alteration, restoration, construction, removal, relocation, or demolition, in whole or in part, of or to a Landmark or Landmark Parcel, or of or to a building or structure within a Historic District shall be processed in accordance with the following procedure:

- A. Any owner of a Landmark, or of a building or structure within a Historic District, may request the issuance of a certificate of appropriateness or certificate of economic hardship by properly filing with the Director an application for such certificate of appropriateness or certificate of economic hardship on a form furnished by the Department. Each application for a certificate of appropriateness or certificate of economic hardship shall include such plans, specifications, statements of work, and any other information which are reasonably required by the Landmarks Commission to make a decision on any such proposed work. An application shall be determined complete within thirty days after the Department receives a substantially complete application together with all information, plans, specifications, statements of work, and any other materials and documents required by the appropriate application forms supplied by the City. If, within the specified time period, the

Department fails to advise the applicant in writing that his or her application is incomplete and to specify additional information required to complete that application, the application shall automatically be deemed complete.

- B. The Director shall schedule a public hearing to be held within forty-five days of the date on which an application for a certificate of appropriateness or certificate of economic hardship is determined complete and shall make a preliminary recommendation to the Commission on or before the date scheduled for a public hearing as to the appropriateness and qualification of the application for a certificate of appropriateness or certificate of economic hardship.
- C. Not more than twenty days and not less than ten days prior to the date scheduled for a public hearing, notice of the date, time, place and purpose thereof shall be given by at least one publication in a daily newspaper of general circulation, shall be mailed to the applicant, and to the owners and residents of all real property within three hundred feet of the exterior boundaries of the Landmark Parcel upon which a Landmark is situated in the case of any proposed work to a Landmark, or within three hundred feet of the exterior boundaries of the lot or lots on which a building or structure within a Historic District is situated in the case of any proposed work to a building or structure within a Historic District, using for this purpose the names and addresses of such owners as are shown on the records of the Los Angeles County Assessor. The failure to send notice by mail to any such real property owner where the address of such owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed designation. The Commission may also give such other notice as it may deem desirable and practicable.
- D. The Commission shall have up to six months, or one year if the project requires an Environmental Impact Report, to render a decision on the certificate application. If the Commission does not render a decision within this time period, then the certificate application shall be automatically determined approved if any required environmental review has been completed. Notwithstanding the foregoing, the Commission may mutually agree with the applicant for a certificate of appropriateness or certificate of economic hardship to extend the six months or one year time period in which the Commission must take action to another time period which is mutually agreeable. The time period provided for in this Section shall be extended by the time period provided for in Section 9.56.160(D) when applicable.
- E. The decision of the Commission shall be in writing and shall state the findings of fact and reasons relied upon to reach the decision, and such decision shall be filed with the Director of Planning.
- F. Subject to the provisions of Section 9.56.180 of this Chapter, upon the rendering of such decision to approve an application for a certificate of appropriateness or certificate of economic hardship, the Commission shall issue the certificate of appropriateness or certificate of economic hardship within a reasonable period of time and such issued certificate of appropriateness or certificate of economic hardship may be obtained by the applicant from the Department.
- G. Subject to other provisions of this Section 9.56.170 and Section 9.56.180 of this Chapter, a decision of the Commission shall be in full force and effect from and after the date of the rendering of such decision by the Commission. A certificate of economic hardship may be appealed to the City Council in the same manner and according to the same procedures as for a certificate of appropriateness.
- H. Subject to other provisions of this Section 9.56.170 and Section 9.56.180 of this Chapter, a certificate of appropriateness or certificate of economic hardship shall be in full force and effect from and after the date of the issuance by the Commission. Any certificate of appropriateness or certificate of economic hardship issued pursuant to this Chapter shall expire one year from its date of issuance unless the work authorized by the certificate has been commenced. In addition, any such certificate of appropriateness or certificate of economic hardship shall also expire and become null and void if

such work authorized is suspended or abandoned for a one hundred eighty day time period after being commenced.

- I. The Commission shall have the power, after a public hearing, to amend, modify or rescind any decision to approve, in whole or in part, an application for a certificate of appropriateness or certificate of economic hardship and to make any preliminary or supplemental designations, determinations or decisions, as additions thereto.
- J. The Commission shall determine the instances in which cases scheduled for public hearing may be continued or taken under advisement. In such instances, no new notice need be given of the further hearing date, provided such date is announced at the scheduled public hearing.
- K. The following rules shall limit the resubmittal of an application for a certificate of appropriateness or certificate of economic hardship:
 - 1. Whenever an application for a certificate of appropriateness or certificate of economic hardship for demolition has been disapproved or deemed disapproved by the Commission, or by the City Council on appeal, no application which is the same or substantially the same as the one which has been disapproved shall be resubmitted to or reconsidered by the Commission or City Council for a period of five years from the effective date of the final action upon the prior application. A certificate of appropriateness or certificate of economic hardship for demolition may be re-filed at any time during the five year period provided that the applicant submits significant additional information which was not and could not have been submitted with the previous application. A re-filed application shall be processed in the manner outlined in this Section 9.56.170. Under this provision, should the applicant still seek to demolish the Landmark structure after the five year period has expired, a new and separate certificate of appropriateness or certificate of economic hardship application would be required to be re-filed. This application shall be subject to the same conditions as the prior application.
 - 2. Whenever an application for a certificate of appropriateness or certificate of economic hardship for other than demolition has been disapproved or deemed disapproved by the Commission, or by the City Council on appeal, no application which is the same or substantially the same as the one which has been disapproved shall be resubmitted to or reconsidered by the Commission or City Council within a period of one hundred eighty days from the effective date of the final action upon such prior application. A certificate of appropriateness or certificate of economic hardship for other than demolition may be re-filed at any time during the one hundred eighty day period provided that the applicant submits significant additional information, which was not and could not have been submitted with the previous application. A re-filed application shall be processed in the manner outlined in this Section 9.56.170. Under this provision, should the applicant still seek approval for other than the demolition of a Landmark structure after the one hundred eighty day period has expired, a new and separate certificate of appropriateness or certificate of economic hardship application would be required to be re-filed. This application shall be subject to the same conditions as the prior application.
- L. Under the authority of Section 9.56.060, the Commission, may, by resolution, establish criteria under which the Landmarks Commission Secretary may approve certificate of appropriateness applications for minor or insignificant alterations, restorations, or construction, in whole or in part, of or to a

Landmark or Landmark Parcel, or of or to a building or structure within a Historic District which would not defeat the purposes and objectives of this Chapter.

9.56.180 Appeals

An appeal to the City Council of an action of the Landmarks Commission shall be processed in accordance with the following procedure:

- A. Each of the following actions by the Commission may be appealed to the City Council:
 1. Any decision relating to an application for the designation of a Landmark.
 2. Any decision defining and describing a Landmark Parcel upon which a Landmark is situated.
 3. Any decision amending, modifying or rescinding any decision to designate a Landmark or Landmark Parcel, or any preliminary or supplemental designations, determinations or decisions, as additions thereto.
 4. Any decision relating to an application for a certificate of appropriateness.
 5. Any decision relating to a structure of merit.
 6. The approval or disapproval of an application of a Landmark, Historic District, Structure of Merit, or certificate of appropriateness that occurred as a result of the expiration of the required time periods for processing such applications.
- B. Any person may appeal a determination or decision of the Commission by filing a notice of appeal with the Department on a form furnished by the Department. Such notice of appeal shall be filed within ten consecutive days commencing from the date that such determination or decision is made by the Commission or from the date an application is deemed approved or disapproved because of the failure to comply with any time period set forth in this Chapter. The notice of appeal shall be accompanied by a fee required by law. Notwithstanding any of the foregoing, any member of the Commission or City Council may request a review by the Commission or City Council of any determination or decision of the Commission without the accompaniment of such fee in the amount required by law. Once an appeal is filed, the review is de novo, and the City Council may review and take action on all determinations, interpretations, decisions, judgments, or similar actions taken which were in the purview of the original hearing body on the application or project and is not limited to only the original reason stated for the appeal.
- C. The City Council shall schedule a public hearing to be held within forty-five days after the notice of appeal is properly filed with the Department. The owner of the improvement may agree to extend the time period for the City Council to hold and conclude the public hearing on the application.
- D. **Notice.**
 1. Not more than twenty days and not less than ten days prior to the date scheduled for a public hearing, notice of the date, time, place and purpose thereof shall be given by the Director by at least one publication in a daily newspaper of general circulation, and shall be mailed to:
 - a. The appellant;
 - b. The owner and residential or commercial tenants of the Landmark in the case of any action regarding a Landmark;
 - c. The owners of all real property within the Historic District in the case of any action regarding an entire Historic District;

- d. The owners of all real property and residential and commercial tenants within three hundred feet of the exterior boundaries of the lot or lots on which a Landmark is located in the case of any action regarding a Landmark;
 - e. The owners and all commercial and residential tenants of all real property within three hundred feet of the exterior boundaries of the Historic District in the case of any action regarding an entire Historic District;
 - f. The owners of all real property and all commercial and residential tenants within three hundred feet of the exterior boundaries of the lots or lots on which a building or structure is located in the case of any action regarding a building or structure within a Historic District.
2. The names and addresses of such owners as are shown on the records of the Los Angeles County Assessor shall be used for providing this notification. The address of the residential and commercial tenants shall be determined by visual site inspection or other reasonably accurate means. The failure to send notice by mail to any such real property where the address of such owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed designation. The Commission or the City Council may also give such other notice as it may deem desirable and practicable.
- E. At the conclusion of the public hearing, or any continuation thereof, the City Council shall render its decision on the notice of appeal and shall approve, in whole or in part, or disapprove the prior determination or decision of the Commission. Any continued public hearing must be completed within thirty days from the date set for the initial public hearing. The City Council decision shall be in full force and effect from and after the date such decision is made. If the City Council fails to take action on the notice of appeal within the thirty day time period, the notice of appeal shall be deemed disapproved. The owner of the improvement may agree to extend the time period for the City Council to hold and conclude the public hearing on the application.
- F. Within thirty days after the decision has been made, the City Council shall approve a statement of official action which shall include:
1. A statement of the applicable criteria and standards against which the application for designation was assessed.
 2. A statement of the facts found that establish compliance or non-compliance with each applicable criteria and standards.
 3. The reasons for a determination to approve or deny the application.
 4. The decision to deny or to approve with or without conditions and subject to compliance with applicable standards.
- G. The appellant and the owner of the Landmark in the case of a decision regarding a Landmark, the owners of all real property within the Historic District in the case of a decision regarding an entire Historic District, or the owner of a building or structure in the case of a building or structure within a Historic District shall be provided a copy of the statement of official action, using for this purpose the names and addresses of such owners as are shown in the records of the Los Angeles County Assessor.

9.56.190 Maintenance and Repair

- A. Every owner, or person in charge, of a Landmark, a Structure of Merit protected by a deed restriction pursuant to Section 9.43.100, or of a building or structure within a Historic District, shall have the duty of keeping in good repair all of the exterior features of such Landmark, Structure of Merit, or of such building or structure within a Historic District, and all interior features thereof which, if not so maintained, may cause or tend to cause the exterior features of such Landmark, or of such building or structure within a Historic District to deteriorate, decay, or become damaged, or otherwise to fall into a state of disrepair. All designated buildings or structures shall be preserved against such decay and be kept free from structural defects through the prompt repair of any of the following:
1. Façades which may fall and injure members of the public or property.
 2. Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports.
 3. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which age, split or buckle due to defective material or deterioration.
 4. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows or doors.
 5. Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering.
 6. Any fault or defect in the building which renders it not properly watertight or structurally unsafe.
- B. This Section 9.56.190 of this Chapter shall be in addition to any and all other provisions of law requiring such Landmark, Structure of Merit protected by a deed restriction pursuant to Section 9.43.100 or such building or structure within a Historic District to be kept in good repair.

9.56.200 Unsafe or Dangerous Conditions

Nothing contained in this Chapter shall prohibit the making of any necessary alteration, restoration, construction, removal, relocation or demolition, in whole or in part, of or to a Landmark or Landmark Parcel, or a Structure of Merit protected by a deed restriction pursuant to Section 9.43.100, or of or to a building or structure within a Historic District pursuant to a valid order of any governmental agency or pursuant to a valid court judgment, for the purpose of remedying emergency conditions determined to be dangerous to life, health or property. A copy of such valid order of any governmental agency or such valid court judgment shall be filed with the Director of Planning and in such cases, no certificate of appropriateness from the Landmarks Commission shall be required.

9.56.210 Ordinary Maintenance

Nothing contained in this Chapter shall be construed to prevent ordinary maintenance or repair of any exterior features of a Landmark, a Structure of Merit protected by a deed restriction pursuant to Section 9.43.100, or of a building or structure within a Historic District which does not involve any detrimental change or modification of such exterior features. In such cases, the work must be approved by the Landmarks Commission Secretary and no certificate of appropriateness from the Landmarks Commission shall be required. The administrative determination is appealable to the Landmarks Commission and shall be filed and processed in the same manner as a certificate of appropriateness. Examples of this work shall include, but not be limited to, the following:

- A. Construction, demolition or alteration of side and rear yard fences.

- B. Construction, demolition or alteration of front yard fences, if no change in appearance occurs.
- C. Repairing or repaving of flat concrete work in the side and rear yards.
- D. Repaving of existing front yard paving, concrete work, and walkways, if the same material in appearance as existing is used.
- E. Roofing work, if no change in appearance occurs.
- F. Foundation work, if no change in appearance occurs.
- G. Chimney work, if no change in appearance occurs.
- H. Landscaping, unless the Landmark designation specifically identifies the landscape layout, features, or elements as having particular historical, architectural, or cultural merit.

9.56.220 Map

All designations of Landmarks and any definitions and descriptions of a Landmark Parcel thereto, and all designations of Historic Districts, shall be recorded on a Landmark and Historic District map by the Director of Planning.

9.56.230 Voluntary Restrictive Covenants

Upon approval by the City Council, the owner of a Landmark may enter into a restrictive covenant with the City regarding such Landmark after negotiations with the Landmarks Commission.

9.56.240 Waiver

The Building Officer of the City shall have the power to vary or waive any provision of the Santa Monica Building, Electrical, Housing, Mechanical or Plumbing Codes, pursuant to such Codes, in any case which he determines that such variance or waiver does not endanger the public health or safety, and such action is necessary for the continued historical preservation of a Landmark.

9.56.250 Extension of Certificate of Appropriateness

The Landmarks Commission Secretary may extend the time period for exercising a certificate of appropriateness as provided for in Section 9.56.170(h) for a period of up to one hundred eighty days upon such terms and conditions as the Secretary deems appropriate consistent with the original approval and Section 9.56.170 if the development standards relevant to the project have not changed since project approval. An extended certificate of appropriateness shall expire if the work authorized thereby is not commenced by the end of the extension period. Except as otherwise provided for in this Section, all provisions of this Code applicable to a certificate of appropriateness shall apply to an extended certificate of appropriateness.

9.56.260 Recordation of Landmarks and Historic Districts

All buildings or structures designated as Landmarks or as part of a Historic District pursuant to this Chapter shall be so recorded by the City in the office of the Los Angeles County Recorder. The document to be recorded shall contain the name of the owner or owners, a legal description of the property, the date and substance of the designation, a statement explaining that the demolition, alteration, or relocation of the structure is restricted, and a reference to this Section 9.56.260 authorizing the recordation.

9.56.270 Preservation Incentives

A. Architectural Review Exemption.

1. Provided that a certificate of appropriateness is obtained from the Landmarks Commission, the following projects shall be exempt from review by the Architectural Review Board:
 - a. All work to a designated landmark building or contributing building or structure to an adopted Historic District; and
 - b. All additions to, modifications of, alterations of, or new construction on a landmark parcel or parcel containing a contributing building or structure to an adopted Historic District.
2. The Landmarks Commission may refer any of these matters to the Architectural Review Board for comment.

B. Building Permit and Planning Application Fees. All building permit and planning fees for administrative approval applications shall be waived for designated landmarks, or contributing buildings or structures located in a Historic District.

C. Certificates of Appropriateness/Administrative Approval Fees. All certificate of appropriateness and certificate of administrative approval fees for any alteration, restoration or construction, in whole or in part, to a designated landmark or to a contributing building or structure located in a Historic District shall be waived.

D. Parking Incentives. Any parking incentives permitted by the Zoning Ordinance.

E. Streetscape Improvements in Historic Districts. Whenever streetscape improvements are proposed by the City in areas that are designated Historic Districts, the City shall consider the use of materials, landscaping, light standards and signage that are compatible with the area's historic and architectural character.

F. State Historical Building Code. The California State Historical Building Code (Title 24, Part 8, California Administrative Code) shall be applied to alterations to designated structures of merit, landmarks, and contributing building or structures located in Historic Districts.

G. Historical Property Contracts. Designated structures of merit, landmarks and contributing buildings or structures located in Historic Districts that are privately owned and not exempt from taxation shall be considered qualified historical properties eligible for historical property contracts submitted or entered into, pursuant to the provisions of Article 12, commencing with Section 50280, Chapter 1, Part 1, Division 1, Title 5, of the California Government Code. The City Council shall, by resolution approve a historical property contract with the owner of a qualified historical property, provided that:

1. The property has no confirmed and outstanding violations of this Code, or any other applicable Federal, State or local law, rule or regulation;
2. The property is not subject to a tax delinquency; and

3. All completed or ongoing alterations, construction or rehabilitation to designated buildings or structures located on the property conform to the Secretary of Interior's Standards for the treatment of Historic Properties.
- H. **Plan Check Processing.** Structures designated as landmarks or contributing buildings or structures to a Historic District shall receive priority Building Division plan check processing.

9.56.280 CEQA Time Extensions

Any time periods set forth in this Chapter may be extended by the Director of Planning by such periods as are necessary to comply with the California Environmental Quality Act (CEQA).

9.56.290 The Third Street Neighborhood Historic District

- A. The City Council has reviewed and considered the Historic District application for the Third Street Neighborhood, and has reviewed and considered the recommendation on the application transmitted from the Landmarks Commission.
- B. The City Council finds and declares that:
 1. The Third Street Neighborhood Historic District possesses aesthetic significance to Santa Monica in that the area displays a high percentage of original, turn of the century, structures, a consistency in building type, primarily the California bungalow, and a close association with the natural environment, as demonstrated in the particular by the siting of the homes on the east side of Third Street which are set into the slope of the hill. These elements combine to create an area with both a sense of place and a sense of Santa Monica's past.
 2. The Third Street Neighborhood Historic District possesses historical economic significance to Santa Monica in that the Vawter family, leading developers of the Neighborhood, were also influential in the economic success of Ocean Park through the founding and operation of Ocean Park's first bank and through the ownership and operation of one of Ocean Park's earliest businesses and tourist attractions, the Ocean Park Floral Company. In addition, the development of piers, bathhouses and hotels stimulated growth in the Ocean Park area by providing jobs and attracting both residents and visitors to Ocean Park and to the Third Street Neighborhood.
 3. The Third Street Neighborhood Historic District possesses historic significance to Santa Monica in that the neighborhood is associated with many prominent early City residents, including the Vawter, Hostetter and Archer families, and Abbot Kinney. The Vawters subdivided the District into residential lots, and also assisted in the establishment of Ocean Park's first water company and Santa Monica's first regular transportation service to Ocean Park. Moses Hostetter and his son William were both Neighborhood residents (2601 Second Street and 237 Beach Street, respectively). Moses Hostetter was a member of the Santa Monica Board of Trustees between 1896 and 1900, serving as chairman of the police, fire, and light committees. Alvin Archer constructed the American Colonial Revival home at 245 Hill Street and was also a founder of Ocean Park's first volunteer fire brigade. His wife, Louetta, was Ocean Park's first postwoman. Abbot Kinney, before developing "Venice of America," owned property on the west side of Second Street in the District, and also gave Ocean Park its name, naming the area after the eucalyptus groves planted by the Vawters near South Santa Monica Beach.

4. The Third Street Neighborhood Historic District possesses architectural significance to Santa Monica in that the area displays a variety of architectural styles, from Victorian to Gothic, to American Colonial Revival, to California Craftsman, to Spanish Colonial Revival, which provide a visual representation of the Neighborhood's development through the 1930s. In addition, the Neighborhood is dominated by bungalows; twenty-nine bungalows and one bungalow court are extant in the District. While typically designed in a variety of architectural styles, the common bungalow theme is the association with the surrounding environment, the use of front porches, sun porches, front steps, overhanging eaves, and numerous windows to provide views and to merge the interior and exterior landscapes. The Third Street Neighborhood is a representative example of this architectural movement in Santa Monica.
 5. The Third Street Neighborhood Historic District possesses cultural significance to Santa Monica in that the area has ties to Santa Monica's religious, artistic and political life through the inclusion of both the Church in Ocean Park and the Iglesia El Sermonete Del Monte Asambleas De Dios (built in 1916 as the First Baptist Church) in the District, the Neighborhood's proximity to the murals along the Ocean Park Boulevard/Fourth Street Overpass, and the use of the Archer House by the Ocean Park Community Center.
- C. The Third Street Neighborhood Historic District boundaries consist of the area bounded on the east by the rear property line of the parcels on the east side of Third Street; bounded on the south by Hill Street including the parcels on the south side of the street but excluding the parcel on the southeast corner of Hill Street and Third Street; bounded on the west by the rear property line of the parcels on the west side of Second Street; and bounded on the north by Ocean Park Boulevard.
 - D. Structures that contribute to the character and integrity of the Third Street Neighborhood Historic District shall be defined as all structures built prior to 1935; noncontributing structures and sites shall be defined as post 1935 developments and vacant parcels.
 - E. Pursuant to Santa Monica Municipal Code Section 9.56.130, until such time as an ordinance is adopted that specifies the nature of any alteration, restoration, construction, removal, relocation, or demolition of or to a building or structure within the Historic District that can occur without prior approval of a certificate of appropriateness, any such work must obtain approval of a certificate of appropriateness or certificate of economic hardship by the Landmarks Commission.

9.56.300 The Bay Craftsman Cluster Historic District

- A. The City Council has reviewed and considered the Historic District Application for the four buildings located at 137, 141, 145, and 147 Bay Street (hereinafter "The Bay Street Cluster"), and has reviewed and considered the recommendation on the application transmitted from the Landmarks Commission.
- B. The City Council finds and declares that:
 1. The Bay Street Cluster exemplifies, symbolizes, and manifests elements of the cultural, social, economic, political, or architectural history of the City in that:
 - a. The Bay Street Cluster are intact representations of Craftsman architecture style. Craftsman architecture was developed in Southern California, and this prototype complex provides an early, intact example of this style of architecture in the two-story, multi-family format. These structures exemplify classic Craftsman characteristics such as low-pitched overhanging roofs with wide eaves, extended rafters, tripartite windows, and sleeping porches.

craftsmanship, or is a unique or rare example of an architectural design, detail, or historical type to such a study in that the early Craftsman design and high degree of integrity remaining in these structures makes these buildings a rare example of the Craftsman period and style. The buildings exist as an intact representative of circa 1910 Craftsman architecture which had its genesis in Southern California. As more fully described in subdivisions (1) and (2) above of this subsection (b), these 1910 buildings retain most of their original components with the exception of what appears to be some simulated brickwork siding.

4. The Bay Street Cluster has a unique location, a singular physical characteristic, or is an established and familiar visual feature of a neighborhood, community or the City in that these buildings have a unique location on the north side of Bay Street between Neilson Way and Main Street. They exist as a mostly intact block face in a neighborhood that is highly fragmented in terms of age and building styles. As most other buildings of this era have been replaced, the buildings have become an established visual feature of the neighborhood that represents turn of the century Ocean Park.
 5. The Bay Street Cluster reflects significant geographical patterns, including those associated with different eras of settlement and growth, particular transportation modes, or distinctive examples of park or community planning. These buildings are located on the north side of Bay Street between Neilson Way and Bay Street. Neilson Way was originally the Pacific Electric right-of-way known as the “Trolley way.” It became a vehicular street in the 1930s. The tracks, which connected Santa Monica to the rest of the region, were a major stimulus for the development of the City and the Ocean Park area. In addition to its proximity to transportation, these structures were close to both the beach and the retail area on Main Street. This remains a desirable location to this day.
- C. Pursuant to Sections 9.56.130 and 9.56.140 of this Code, until such time as an ordinance is adopted that specifies the nature of any alteration, restoration, construction, removal, relocation, or demolition of or to a building or structure within the Historic District that can occur without prior approval of a Certificate of Appropriateness, any such work must obtain approval of a Certificate of Appropriateness or Certificate of Economic Hardship by the Landmarks Commission.

Chapter 9.57 Historic Resource Disclosure

Sections:

9.57.010	Definitions
9.57.020	Disclosure of Historic Resources
9.57.030	Remedies

9.57.010 Definitions

- A. “Buyer” means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent with the object of entering into a real property transaction. “Buyer” includes vendee or lessee.
- B. “Offer to purchase” means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller.
- C. “Owner” means any person, co-partnership, association, corporation or fiduciary having legal or equitable title or any interest in real property.
- D. “Real property transaction” means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase.
- E. “Sale” means a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of California Civil Code Section 2985, and transactions for the creation of a leasehold exceeding one year’s duration.
- F. “Selling agent” means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller.

9.57.020 Disclosure of Historic Resources

If real property has been designated by the City of Santa Monica as a landmark, structure of merit, or a contributor to a historic district; has been identified in the City’s Historic Resource Inventory or any update thereto; or is located within a Neighborhood Conservations Overlay District; the owner or the selling agent of the real property shall, in any real property transaction, provide the buyer of the real property with notice informing the buyer of the property’s historic status. The owner or the selling agent shall provide the notice to the buyer as soon as practicable before transfer of title. The buyer shall execute a receipt therefore as furnished by the City and said receipt shall be delivered to the City Clerk as evidence of compliance with the provisions of this Chapter.

9.57.030 Remedies

If any disclosure required to be made by this Chapter is delivered after the execution of an offer to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail to terminate his or her offer by delivery of a written notice of termination to the owner or selling agent. Any person who violates the provisions of this Chapter shall be subject to the penalties and remedies specified in Chapter 1.08. In addition, a buyer who does not receive the notice required by Section 9.57.020 may bring a civil action for damages.

Chapter 9.58 The Third Street Neighborhood Historic District Standards

Sections:

9.58.010	Definitions
9.58.020	Applicability
9.58.030	Criteria for Issuance of Applications
9.58.040	Procedures
9.58.050	Demolition
9.58.060	Architectural Review Board Exemption
9.58.070	Design Guidelines
9.58.080	Maintenance and Repair
9.58.090	Citizen Participation
9.58.100	Conceptual Review by Landmarks Commission
9.58.110	Landscape Survey

9.58.010 Definitions

Words or phrases as used in this Chapter shall have the meaning as defined in Section 9.56.030 except as otherwise defined as follows:

- A. **Certificate of Administrative Approval.** A certificate issued by the Landmarks Commission Secretary, or Landmarks Commission on Appeal, for a project in the Third Street Neighborhood Historic District pursuant to Section 9.58.030(B).
- B. **Certificate of Appropriateness.** A certificate issued for a project in the Third Street Neighborhood Historic District pursuant to Section 9.58.030(C).
- C. **Certificate of Exemption.** A certificate issued by the Landmarks Commission Secretary for a project in the Third Street Neighborhood Historic District pursuant to Section 9.58.030(A).
- D. **Contributing Structures.** All structures located within the Third Street Neighborhood Historic District boundaries that were constructed in 1935 or earlier.
- E. **District.** The Third Street Neighborhood Historic District.
- F. **Project.** Any alteration, restoration, construction, reconstruction, removal, relocation or demolition of a structure within the Third Street Neighborhood Historic District.
- G. **Third Street Neighborhood Historic District Boundaries.** The Third Street Neighborhood Historic District boundaries consist of the area bounded on the east by the rear property line of the parcels on the east side of Third Street; bounded on the south by Hill Street, including the parcels on the south side of the street but excluding the parcel on the southeast corner of Hill Street and Third Street; bounded on the west by the rear property line of the parcels on the west side of Second Street; and bounded on the north by the southside of Ocean Park Boulevard.

- H. **Noncontributing Structures and Sites.** All structures located within the Third Street Neighborhood Historic District boundaries constructed after 1935 as well as vacant parcels.
- I. **Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.** Those certain guidelines for the planning and review of historic building rehabilitation, restoration, alteration and addition, prepared by the United States Department of Interior dated 1976, and as may be amended from time to time.

9.58.020 Applicability

- A. **Automatic Exemption.** No City approval shall be required for work to a contributing or non-contributing building if no building permit is required and if the work does not require a certificate of administrative approval or certificate of appropriateness under this Section.
- B. **Certificate of Exemption.**
 - 1. A certificate of exemption shall be required for the following work to contributing and non-contributing buildings within the District if a building permit is required:
 - a. All interior alterations.
 - b. House painting resulting in no change in color.
 - c. New screens.
 - d. Flat concrete work in the side and rear yards.
 - e. Repaving of existing front yard paving, concrete work and walkways, if the same material in appearance as existing is used.
 - f. General maintenance and repair if it results in no change in existing appearance.
 - g. Removal or addition of minor landscape features, including sprinkler systems and excluding mature trees.
 - h. Removal of mature trees if severely damaged or diseased.
 - i. Emergency repairs necessary to preserve life, health or property as determined by the Building Officer to be immediate and necessary.
 - j. Rear or side yard fences.
 - 2. A certificate of exemption shall be required for the following work to noncontributing buildings within the District if a building permit is required:
 - a. Roofing work, other than general maintenance.
 - b. Foundation work, other than general maintenance.
 - c. Chimney work, other than general maintenance.
- C. **Certificate of Administrative Approval.**
 - 1. A certificate of administrative approval shall be required for the following work to contributing and noncontributing buildings within the District:
 - a. House painting resulting in a change in color.
 - b. Retaining walls.
 - c. New windows or doors.

- d. Skylights.
 - e. Removal of mature trees if specifically identified in a landscape survey adopted by the Landmarks Commission.
 - f. Removal, demolition, addition or alteration to front yard fences.
 - g. Removal, demolition, addition, alteration or repaving of front yard paving, concrete work or walkways, if material used changes existing appearance.
 - h. Roof top solar equipment or exterior telecommunication equipment.
 - i. Mechanical systems including air conditioning or heating.
2. A certificate of administrative approval shall be required for the following work to contributing buildings within the District:
 - a. Roofing work, other than general maintenance.
 - b. Foundation work, other than general maintenance.
 - c. Chimney work, other than general maintenance.
- D. **Certificate of Appropriateness.** A certificate of appropriateness shall be required for the following work to contributing and noncontributing buildings within the Third Street Neighborhood Historic District:
1. Surfacing and resurfacing of exterior walls if it changes appearance.
 2. Removal, demolition, addition or alteration to the front of structures.
 3. Removal, demolition, addition or alteration to the side or rear of structures.
 4. Construction of new buildings within the Third Street Historic District boundaries.
 5. Relocation of buildings within, out of, or into the Third Street Neighborhood Historic District.
 6. Removal, demolition, addition or alteration to building roof lines.
 7. Any other similar work not enumerated in subdivision (A), (B), or (C) of this Section, as determined by the Landmarks Commission Secretary within his or her sole discretion, except that any demolition of a contributing or noncontributing structure shall be governed by the provisions of Section 9.58.050.

9.58.030 Criteria for Issuance of Applications

- A. **Criteria for Issuance of Application for Exemption.** The Landmarks Commission Secretary shall issue a certificate of exemption for projects in the District if the Secretary finds that the proposed project is included within the list of work enumerated in Section 9.58.020(B).
- B. **Criteria for Issuance of Application for Certificate of Administrative Approval.** The Landmarks Commission Secretary, or the Landmarks Commission on appeal, shall issue a certificate of administrative approval for projects in the District if the Secretary or Commission finds that the project is included within the list of work enumerated in Section 9.58.020(C); that the project is not detrimental to the character of the structure; and that the project does not detract from the integrity of the district.

- C. **Criteria for Issuance of Application for Certificate of Appropriateness.** The Landmarks Commission, or the City Council on appeal, shall issue a certificate of appropriateness for projects in the District if it finds that the project is included within the list of work enumerated in Section 9.58.020(D), and it makes a determination in accordance with any one or more, as appropriate, of the following criteria, which shall be in lieu of those otherwise required by Section 9.56.140:
1. That in the case of any proposed alteration, restoration, construction, removal or relocation, in whole or in part of or to a contributing building or structure within the District, the proposed work would not be incompatible with the exterior features of other contributing improvements within the District, not adversely affect the character of the District, and not be inconsistent with any design guidelines and standards that may be developed and adopted by the Landmarks Commission specifically for the District.
 2. That in the case of any proposed alteration, restoration, construction, removal or relocation, in whole or in part, of or to a contributing building or structure within the District, the proposed work would not adversely affect any exterior feature of the historic structure.
 3. That in the case of any proposed work to a noncontributing building or structure within the District reasonable effort has been made to produce compatibility with the District character as set forth in Section 9.36.290, and with the scale, materials and massing of the contributing structures within the District.
 4. That in the case of any proposed construction of a new improvement on any parcel located within the District boundaries, the exterior features of such new improvement and its placement on the property would not adversely affect and not be disharmonious with the District character as set forth in Section 9.36.290, and with the scale, materials and massing of the contributing structures within the District.
 5. That the applicant has obtained a certificate of economic hardship in accordance with Section 9.56.160.

9.58.040 Procedures

A. **Certificate of Exemption and Certificate of Administrative Approval.**

1. **Application Process.** An application for a certificate of exemption and certificate of administrative approval for a project in the District shall be filed only by the property owner or the property owner's authorized agent on a form supplied by the City. An application shall be deemed complete within thirty days after the Planning Division receives a substantially complete application together with all information, plans, specifications, statements of work, photographs of the affected area of the property, verification that notice of the pending application has been posted on the property, and other material and documents required by the application. If, within the specified time period, the Planning Divisions fails to advise the applicant in writing that his or her application is incomplete and to specify additional information required to complete that application, the application shall automatically be deemed complete. A public hearing shall not be required for issuance of a certificate of exemption or a certificate of administrative approval, but posting of the property pursuant to Section 9.58.040(A)(3) shall be required.
2. **Timing of Application.** A certificate of exemption for a project in the District approved by the Landmarks Commission Secretary shall be required to be issued prior to issuance of any building permit for the use or activity. A certificate of administrative approval shall be required to be issued prior to issuance of any building permit for, or commencement of, the use or activity.

3. **Posting of Property.** Prior to filing an application for a certificate of administrative approval for a project in the District, the applicant shall post notice of the pending application on the property in the manner set forth by the Zoning Administrator in the application form supplied by the City. This notice must be continuously posted while the application is pending. This requirement shall not apply to applications for a certificate of exemption.
4. **Determination.** The Landmarks Commission Secretary shall issue or deny a certificate of exemption or a certificate of administrative approval for a project in the District within thirty days of the application being deemed complete. For a certificate of administrative approval, the Landmark Commission Secretary shall post this determination on the property and the applicant shall ensure that the determination remains posted for the duration of the appeal period. The Landmarks Commission Secretary shall also post this determination on the City's website. The Landmarks Commission Secretary shall send a copy of the determination to all members of the Landmarks Commission and to the Committee created pursuant to Section 9.58.090 of this Chapter.

B. Certificate of Appropriateness and Certificate of Economic Hardship

1. **Application Process.** An application for a certificate of appropriateness, or certificate of economic hardship for a project in the District shall be filed only by the property owner or the property owner's authorized agent on a form supplied by the City. A certificate of appropriateness and certificate of economic hardship shall be processed in accordance with Section 9.56.170(A) through 9.56.170(J), except that the applicant shall also be required to post notice of the pending application as provided in Section 9.58.040(B)(3), that notice of the public hearing shall be conducted as provided in Section 9.58.040(B)(4), and that the applicant must provide verification at the time of application that they have met with representatives of any Third Street Neighborhood Historic District neighborhood association as may exist.
2. **Timing of Application.** A certificate of appropriateness or certificate of economic hardship for a project in the District approved by the Landmarks Commission shall be required to be issued prior to issuance of any demolition permit, building permit for, or commencement of, the use or activity.
3. **Posting of Property.** Prior to filing an application for a certificate of appropriateness, or certificate of economic hardship for a project in the District, the applicant shall post notice of the pending application on the property in the manner set forth by the Zoning Administrator in the Application Form supplied by the City. This notice must be continuously posted while the application is pending.
4. **Notification.** Within ten days of deeming an application for a certificate of appropriateness or certificate of economic hardship complete, notice of the date, time, place, and purpose of the public hearing shall be given by at least one publication in a daily newspaper of general circulation shall be mailed to the applicant, and to the residents and owners of all real property within the Third Street Neighborhood Historic District, as well as to the residents and owners of all real property within three hundred feet of the exterior boundaries of the property involved. The notice shall also be posted on the City's website. The public hearing for said notice shall occur not less than ten days and no more than thirty-five days after notice is given. The failure to send notice by mail to any such real property owner where the

address of such owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed project. The Commission may also give such other notice as it may deem desirable and practical.

5. **Determination.** The Landmarks Commission shall issue its determination on a certificate of appropriateness or certificate of economic hardship for a project in the District in accordance with Section 9.56.170(E) through 9.56.170(G).
- C. **Appeals.** Appeals shall be processed according to the following procedures:
1. **Certificate of Exemption.** The approval, conditions of approval, or denial of a certificate of exemption shall not be appealable, except that upon the request of the applicant the Landmarks Commission Secretary shall process any such denial as an application for a certificate of administrative approval or certificate of appropriateness, as appropriate. The applicant must comply with all rules and procedures, including the payment of any applicable fees, governing the applicable certificate.
 2. **Certificate of Administrative Approval.** The approval, conditions of approval, or denial of a certificate of administrative approval for a project in the District may be appealed to the Landmarks Commission by any aggrieved person. Appeals must be filed within fourteen days of the date the determination is posted on the property. A public hearing before the Landmarks Commission shall be scheduled at the next available regular meeting. Public notice of the appeal hearing shall conform to the manner in which the original notice of application was given. Notice of the appeal hearing shall also be posted on the City's website.
 3. **Certificate of Appropriateness and Certificate of Economic Hardship.** The approval, conditions of approval, or denial of an application for a certificate of appropriateness or certificate of economic hardship may be appealed to the City Council according to the procedures set forth in Section 9.56.180.
- D. **Expiration of Approvals.** Any certificate issued for a project in the District pursuant to this Chapter shall expire of its own limitation within a one-year time period commencing on the effective date of the certificate if the work authorized is not commenced by the end of such one-year time period. In addition, any certificate shall also expire and become null and void if such work authorized is suspended or abandoned for a one-hundred-eighty day time period after being commenced.
- E. **Effective Date of Decision.** A decision on a project in the District that is subject to appeal shall not become effective until after the date the appeal period expires. A decision not subject to appeal shall become effective upon issuance.
- F. **Extension of Approvals.** The Landmarks Commission may, by resolution, for good cause, extend the time period for exercising a certificate of exemption, a certificate of administrative approval, certificate of appropriateness or certificate of economic hardship for a project in the District for a period of up to one hundred and eighty days upon such terms and conditions as the Commission deems appropriate. Such extended certificate shall expire if the work authorized by the extension is not commenced by the end of the extension period.
- G. **Resubmittal of an Application.** Notwithstanding Section 9.56.170(K), whenever an application for a certificate of exemption or certificate of administrative approval, for a project in the District has been deemed disapproved by the Landmarks Commission Secretary or by the Landmarks Commission on appeal, or whenever an application for a certificate of appropriateness or certificate of economic hardship for a project in the District has been deemed disapproved by the Landmarks Commission or by the City Council on appeal, no application which is substantially the same may be

resubmitted to or reconsidered by the Landmarks Commission Secretary, Landmarks Commission or City Council for a period of twelve months from the date of the effective date of the final action. However, any such certificate application may be refiled at any time during the twelve-month period provided that the applicant submits significant additional information which was not and could not have been submitted with the previous application. The refiled application shall be processed in the same manner as the original application.

- H. **Fees.** The City Council may by resolution establish fees for any application or appeal permitted by this Chapter. Members of the Landmarks Commission shall not be required to pay a fee when filing an appeal of the determination for a certificate of administrative approval or certificate of appropriateness. No fee shall be required for a certificate of exemption and a certificate of administrative approval.
- I. **Other City Approvals.** In connection with any project that requires a certificate of exemption, certificate of administrative approval, certificate of appropriateness, or certificate of economic hardship under this Chapter, any approval of such project by any other City body, board, commission or officer shall be conditioned on obtaining the necessary approval pursuant to this Chapter.

9.58.050 Demolition

- A. **Contributing Structures.** The demolition of contributing structures located within the District shall only be permitted upon issuance of a certificate pursuant to subsections (1) or (2) below:
 - 1. The Landmarks Commission's issuance of a certificate of appropriateness based upon all of the following findings:
 - a. That the structure does not embody distinguishing architectural characteristic valuable to a study of a period, style, method of construction or the use of indigenous materials or craftsmanship and does not display such aesthetic or artistic quality that it would not reasonably meet the criteria for designation as one of the following: National Historic Landmark, National Register of Historic Places, California Registered Historical Landmark, or California Point of Historical Interest.
 - b. That the conversion of the structure into a new use permitted by right under current zoning or with a conditional use permit, rehabilitation, or some other alternative for preserving the structure, including relocation within the District boundaries is not feasible.
 - c. That the removal of the structure from the District will not result in a loss of the District's historic integrity.
 - 2. The Landmarks Commission's issuance of a certificate of economic hardship in accordance with Section 9.56.160.
- B. **Noncontributing Structures.** The demolition of noncontributing structures located within the District shall be permitted only upon compliance with the procedures set forth in Chapter 9.25.
- C. **Demolition Permit Order of Review.** Whenever a project is proposed for a structure or site within the District boundaries that involves the demolition of a contributing structure and will require the review, approval or issuance of any Zoning Conformance Review permit, conditional use permit, development review permit, tentative parcel map, tentative tract map or building permit the applicant

must first obtain either a certificate of appropriateness or a certificate of economic hardship from the Landmarks Commission to permit such demolition.

9.58.060 Architectural Review Board Exemption

All structures located within the boundaries of the District shall be excluded from any City architectural review district, and be exempt from Architectural Review Board approval.

9.58.070 Design Guidelines

- A. The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings may be used by the Landmarks Commission and Landmarks Commission Secretary to assist in its evaluation of proposed projects within the District. The Secretary's Guidelines, however, shall not be considered dispositive with respect to any project or determination on any certificate required for work in the District.
- B. The Landmarks Commission shall adopt design guidelines for the District within one hundred eighty days of the date of adoption of this Chapter.

9.58.080 Maintenance and Repair

Every property owner of a structure within the District shall have the duty of keeping in good repair all exterior features of the District structure, and all interior features thereof which, if not so maintained, may cause or tend to cause the exterior features of the Historic District structure to deteriorate, decay or become damaged, or otherwise to fall into a state of disrepair. Any property owner who fails to comply with this Section shall be given written notice by the City of the violation of this Section and shall within sixty days of receipt of written notice from the City bring the property into compliance with this Section.

9.58.090 Citizen Participation

The Landmarks Commission, within ninety days of the date of adoption of this Chapter, shall adopt a resolution establishing an ongoing process to ensure citizen participation in the proceedings under this Chapter. The resolution shall include:

- A. A committee established by and reporting to the Landmarks Commission consisting of at least one member of the Landmarks Commission and two members of the public residing within the District.
- B. Distribution to the Committee of all applications for certificates of appropriateness filed under this Chapter, all determinations and appeals concerning certificates of administrative approval, and any pending conceptual review proceeding pursuant to Section 9.58.100.
- C. Procedures by which the Committee shall make recommendations to the Landmarks Commission concerning applications filed under this Chapter.

9.58.100 Conceptual Review by Landmarks Commission

Any project that requires a certificate of appropriateness pursuant to this Chapter and also requires discretionary review by the Planning Commission shall be reviewed in concept by the Landmarks Commission before the review by the Planning Commission. Following such conceptual review, the Landmarks Commission shall transmit the results of its deliberations to the Planning Commission. The Planning Commission in its deliberations shall consider the comments of the Landmarks Commission.

9.58.110 Landscape Survey

The Landmarks Commission shall prepare a landscape survey within one hundred eighty days of the date of adoption of this Chapter. The landscape survey shall survey the mature trees within the District.

Chapter 9.59 Sexually-Oriented Businesses

Sections:

9.59.010	Purpose
9.59.020	Definitions
9.59.030	Location of Sexually-Oriented Businesses
9.59.040	Amortization of Sexually-Oriented Business
9.59.050	Processing and Approval of Business License Applications
9.59.060	Business License Validity and Conditions
9.59.070	Sale or Transfer of Business
9.59.080	Displays
9.59.090	Judicial Review

9.59.010 Purpose

- A. It is the purpose and intent of this Chapter to regulate the operations of sexually-oriented businesses, which have judicially recognized adverse secondary effects, including, but not limited to, increases in crime in the vicinity of adult businesses; decreases in property values in the vicinity of adult businesses; increases in vacancies in residential and commercial areas in vicinity of adult businesses; interference with residential property owners' enjoyment of their properties; and the deterioration of neighborhoods.
- B. Special regulation of these businesses is necessary to prevent these adverse secondary effects while at the same time protecting the First Amendment rights of those individuals who desire to own, operate or patronize adult businesses.
- C. It is therefore the purpose of this Chapter to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses or their close proximity to incompatible uses, while permitting the location of sexually-oriented businesses in certain areas.

9.59.020 Definitions

- A. **Adult-oriented merchandise.** Any goods, products, commodities or other ware, including, but not limited to videos, CDs, DVDs, computer disks or other storage devices, magazines, books, pamphlets, posters, cards, periodicals, or non-clothing novelties which are distinguished or characterized by an emphasis upon the depiction, simulation, or acting out of specified sexual activities or specified anatomical areas.
- B. **Designated Commercial Districts.** Shall mean the MUB, MUBL, GC, Bergamot, and Downtown Districts.
- C. **Distinguished or Characterized by an Emphasis Upon.** The dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas.
- D. **Establishment of a Sexually-Oriented Business.** A sexually-oriented business shall mean and include any of the following:

1. The opening or commencement of any sexually-oriented business as a new business;
 2. The conversion of an existing business, whether or not a sexually-oriented business, to any sexually-oriented business defined herein;
 3. The addition of any of the sexually-oriented businesses defined herein to any other existing sexually-oriented business; or
 4. The relocation of any such sexually-oriented business.
- E. **Regularly Features.** A regular and substantial course of conduct. Live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical area or specified sexual activities which occur on four or more occasions within a thirty-day period; six or more occasions within a sixty-day period; or eight or more occasions within a one hundred eighty day period shall be deemed to be a regular and substantial course of conduct.
- F. **Religious Institution.** A church, convent, monastery, synagogue, mosque, or other place of religious worship.
- G. **Residential Districts.** Shall mean the R1, R2, R3, R4, OF, OP1, OPD, OP2, OP3, and OP4 Districts or any other district designated by the City Council as a residential district.
- H. **School.** Any child care and early education facility or day care center, or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, charter school, or any special institution of education or work training program for physically and mentally disabled adults, but does not include a vocational or professional institution of higher education, including a community or junior college, or college or university.
- I. **Sexually-Oriented Businesses.** Sexually-oriented business shall mean any of the following:
1. **Adult Arcade.** An establishment where, for any form of consideration, one or more still or motion picture projectors, or similar machines, for viewing by five or fewer persons each, are used to show films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions thirty percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction, simulation, or acting out of specified sexual activities or specified anatomical areas.
 2. **Adult Cabaret.** A nightclub, restaurant, or similar business establishment which:
 - a. Regularly features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities;
 - b. Regularly features persons who appear semi-nude; or
 - c. Shows films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions thirty percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction, simulation, or acting out of specified sexual activities or specified anatomical areas.
 3. **Adult Hotel/Motel.** A hotel or motel or similar business establishment offering public accommodations for any form of consideration which:

- a. Provides patrons with closed-circuit television transmissions, films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions thirty percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction, simulation, or acting out of specified sexual activities or specified anatomical areas; and
 - b. Rents, leases, or lets any room for less than a six-hour period, or rents, leases or lets any single room more than twice in a twenty-four hour period.
- 4. ***Adult Motion Picture Theater.*** A business establishment where, for any form of consideration, films, computer generated images, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and thirty percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction, simulation, or acting out of specified sexual activities or specified anatomical areas.
 - 5. ***Adult Retail Use Establishment.*** An establishment that has thirty percent or more of its stock in adult-oriented merchandise.
 - 6. ***Adult Theater.*** A theater, concert hall, auditorium, or similar establishment which, for any form of consideration, regularly features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.

J. **Specified Sexual Activities.** Specified Sexual Activities shall mean:

- 1. Human genitals in a state of sexual stimulation or arousal;
- 2. Sex acts, actual or simulated, including acts of masturbation, sexual intercourse, oral copulation, or sodomy;
- 3. Fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breasts; or
- 4. Excretory functions as part of or in connection with any of the other activities described in subdivisions (1) through (3) of this subsection.

K. **Specified Anatomical Areas.** Specified anatomical areas shall mean:

- 1. Less than completely and opaquely covered:
 - a. Human genitals, pubic region;
 - b. Buttock; and
 - c. Female breast below a point immediately above the top of the areola; or
- 2. Human male genitals, less than completely and opaquely covered, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- 3. Any device, costume, or covering that simulates any of the body parts included in subdivisions (1) or (2) of this subsection.

- L. **Stock.** Stock shall mean any of the following:
1. The business devotes thirty percent or more of the retail floor area to adult-oriented merchandise.
 2. The business devotes thirty percent or more of its annual retail inventory (measured by the number of items or the consumer retail price of the inventory) to adult-oriented merchandise.
 3. The retail value of merchandise that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas is thirty percent or more of the total retail value of inventory offered in each of the following categories:
 - a. Books;
 - b. Magazines;
 - c. Video tapes or any material in digital format including, but not limited to, compact disc (CD) or digital video disc (DVD), for sale or rental;
 - d. Non-clothing novelties and devices; and
 - e. On-premises viewing of images, films and/or videos.
 4. Annual gross revenue derived from adult-oriented merchandise is thirty percent or more of the total gross revenue.
 5. There is a rebuttable presumption that a business constitutes a sexually-oriented business where the business:
 - a. Offers or advertises merchandise that is distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas; and
 - b. Fails to make revenue and inventory related business records available to the City upon reasonable advance notice.

9.59.030 Location of Sexually-Oriented Businesses

- A. It shall be unlawful to operate or cause to be operated a sexually-oriented business except as provided in this Code:
1. Sexually-oriented businesses shall be considered a permitted use only in designated commercial districts. Sexually-oriented businesses shall be prohibited in all other zoning districts in the City.
 2. Within the designated commercial districts, no person shall cause or permit the establishment of any sexually-oriented business within five hundred feet of any, religious institution, school, public park, public library, public playground, or residential district, or within one thousand feet of another sexually-oriented business.
- B. The required separation distance between sexually-oriented businesses and any of the uses specified above shall be measured in a straight line from the closest points on the property lines of each site.
- C. No more than one sexually-oriented business may be operated or maintained in the same building, structure, or portion thereof.

9.59.040 Amortization of Nonconforming Uses

The following amortization provisions shall apply to nonconforming uses:

- A. Any use of real property existing on September 27, 2005, which does not conform to the provisions of this Chapter, but which was constructed, operated and maintained in compliance with all previous regulations governing sexually-oriented uses, shall be regarded as a legal nonconforming use which may be continued until November 24, 2006.
- B. The owner or operator of a nonconforming use may apply to the City Council for an extension of time within which to terminate the nonconforming use. An extension shall be for a reasonable period of time commensurate with the investment involved and shall be approved if the City Council makes all of the following findings or such other findings as are required by law:
 - 1. The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another use; and such investment was made prior to September 27, 2005.
 - 2. The applicant will be unable to recoup said investment as of November 24, 2006.
 - 3. The applicant has made good faith efforts to recoup the investment and to relocate the use to a location to meet the requirements of this Chapter.
- C. For purposes of this section, in the case of two adult uses located within one thousand feet of one another, that use which was first lawfully established and is otherwise in conformity with this Chapter, shall be entitled to continue in its present location.

9.59.050 Processing and Approval of Business License Applications

- A. The City shall act upon any application for a business license to operate a sexually-oriented business within 30 days. The failure to act on the application within 30 days shall be deemed an approval unless the applicant voluntarily agrees to extend the time for the City to act upon the application. The City shall approve the business license application unless it is determined that:
 - 1. The applicant, its employee, agent, partner, director, officer, stockholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application or in any report or record required to be filed with the Finance Department.
 - 2. The application does not contain the information required by this Chapter or Chapter 6 of this Code.
 - 3. All required fees have not been paid.
 - 4. The operation of the sexually-oriented business is or would be in violation of one or more provisions of this Chapter.
 - 5. The premises where the sexually-oriented business is or would be located does not comply with all applicable laws, including, but not limited to the City's building, health, zoning and fire ordinances.
 - 6. A business license for the operation of the sexually-oriented business has been issued to the applicant, a partner of the applicant or a stockholder of the applicant which stockholder owns more than ten percent of the applicant's corporate stock, which business license has been suspended and the period of suspension has not yet ended.

- B. Notice of the business license denial shall be in writing and shall state the grounds for denial. Notice shall be personally served to the business license applicant or mailed to the address listed on the application form.

9.59.060 Business License Validity and Conditions

The City may condition issuance of a business license to ensure compliance with the provisions of this Chapter and other standards and regulations of the City's Municipal Code applicable to the operation of a sexually-oriented business. Each business license shall be valid only:

- A. For the business owner(s) specified in the business license application.
- B. For the business name for the sexually-oriented business listed in the business license application.
- C. For the specific type of sexually-oriented business described in the business license application.
- D. For the specific location described in the business license application.

9.59.070 Sale or Transfer of Business

- A. No business license issued in compliance with this Chapter shall be assigned or transferred without the prior written approval of the City. The applicant shall apply for a transfer on a form provided by the City and shall pay the application processing fee established by Council resolution for a new sexually-oriented business.
- B. An application for approval of a transfer of a business license shall be required prior to any change in an interest in a partnership or ownership of ten percent or more of the stock of a corporation to any person not listed on the original approved application.
- C. An application for transfer of a business license may be denied for any of the grounds specified for denial of an original business license application.

9.59.080 Displays

A sexually-oriented business authorized by this Section shall not display any signs, advertising, posters, photographs, graphic representations or adult-oriented merchandise that can be viewed by persons off the site and which depict specified sexual activities or specified anatomical areas.

9.59.090 Judicial Review

Anyone seeking judicial review of any administrative action under this Chapter may seek a writ of mandate for prompt judicial review of such administrative action pursuant to California Code of Civil Procedure Section 1094.8.

Chapter 9.60 Development Agreements

Sections:

9.60.010	Purpose
9.60.020	Authority and Scope
9.60.030	Application Forms
9.60.040	Qualified Applicant
9.60.050	Proposed Agreement
9.60.060	Filing of Application
9.60.070	Review of Application
9.60.080	Processing
9.60.090	Notice of Intention
9.60.100	Notice Requirements
9.60.110	Required Findings
9.60.120	Hearing by City Council
9.60.130	Decision by City Council
9.60.140	Approval of Development Agreement
9.60.150	Amendment and Cancellation
9.60.160	Recordation
9.60.170	Periodic Review
9.60.180	Modification or Termination
9.60.190	Irregularity in Proceedings

9.60.010 Purpose

The purpose of this Chapter is to establish procedures and regulations for Development Agreements.

9.60.020 Authority and Scope

This Chapter is adopted pursuant to Article 11, Section 7 of the California Constitution and pursuant to Government Code Section 65864 et seq. All Development Agreement entered into after the effective date of this Chapter shall be processed in accordance with the provisions of this Chapter. In performing his or her functions under this Chapter, the Planning Director shall act under the direction of the City Manager.

9.60.030 Application Forms

The Planning Director shall prescribe the form of each application, notice and documents provided for or required under this Chapter for the preparation, processing, and implementation of Development Agreement. The application shall include a fiscal impact statement on the proposed development. The Planning Director may require an applicant for a Development Agreement to submit such information and supporting data as the Planning Director considers necessary to process the application.

9.60.040 Qualified Applicant

An application for a Development Agreement may only be filed by a person who has a legal or equitable interest in the real property for which a Development Agreement is sought or the authorized representative of such a person.

9.60.050 Proposed Agreement

Each application shall be accompanied by the form of Development Agreement proposed by the applicant.

9.60.060 Filing of Application

The Planning Director shall endorse on the application the date it is received. The Planning Director shall review the application and may reject the application if it is not completed in the manner required by this Chapter.

9.60.070 Review of Application

The application shall be reviewed by the Planning Director. After reviewing the application and any other pertinent information, the Planning Director shall prepare a staff report. The staff report shall analyze the proposed development and shall contain a recommendation as to whether or not the Development Agreement proposed or in an amended form should be approved or disapproved.

9.60.080 Processing

- A. The Planning Commission shall consider the proposed development agreement and make a recommendation thereon to the City Council in the manner set forth in this Chapter. The Planning Commission shall conclude its consideration of and make its recommendation on the proposed development agreement within ninety days of the time specified for the public hearing in the notice of intention. The applicant may agree to extend this ninety-day review period.
- B. In addition to formal consideration of the proposed development agreement by the Planning Commission pursuant to this Section, the City Council may establish procedures for early conceptual review of the development agreement proposal by the City Council and City Boards and Commissions or a combination thereof preceding the Planning Commission's formal consideration.

9.60.090 Notice of Intention

Upon completion of the staff report required by Section 9.60.070, the Planning Director shall give notice of intention to consider adoption of a Development Agreement. The notice shall contain:

- A. The time and place of the public hearing.
- B. A general explanation of the Development Agreement including a general description of the property proposed to be developed.
- C. Other information that the Planning Director considers necessary or desirable.

9.60.100 Notice Requirements

- A. The Planning Commission shall hold a public hearing on the proposed Development Agreement at the time and place specified in the notice.
- B. All notice required by this Chapter shall be given in the following manner:

1. Mailing or delivery to the applicant and to all persons, including businesses, corporations or other public or private entities, shown on the last equalized assessment roll as owning real property within 500 feet of the property which is the subject of the development agreement.
 2. Mailing or delivery to all tenants of property within 500 feet of the property which is the subject of the development agreement.
 3. Mailing by first class mail to any person who has filed a written request therefore with the Planning Director.
 4. Publication at least once in a newspaper of general circulation published and circulated in the City.
- C. The failure to receive notice by any person entitled thereto by law or this Chapter does not affect the authority of the City to enter into a Development Agreement.

9.60.110 Required Findings

The Planning Commission shall make its recommendation to the City Council in writing. The recommendation shall include whether or not the proposed Development Agreement:

- A. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- B. Is compatible with the uses authorized in the district in which the real property is located;
- C. Is in conformity with the public necessity, public convenience, general welfare, and good land use practices;
- D. Will be detrimental to the health, safety and general welfare;
- E. Will adversely affect the orderly development of the property; and
- F. Will have a positive fiscal impact on the City.

9.60.120 Hearing by City Council

After the recommendation of the Planning Commission or after the expiration of the time period specified in Section 9.60.080, the Planning Director shall give notice of a public hearing before the City Council in the manner provided for in Section 9.60.100.

9.60.130 Decision by City Council

- A. After it completes the public hearing and considers the recommendation, if any, of the Planning Commission, the City Council -may accept, modify or disapprove the proposed Development Agreement. It may, but need not, refer the matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for report and recommendation. The Planning Commission shall hold a public hearing on matters referred back to it by the City Council.
- B. The Development Agreement may not be approved unless the City Council finds that the Development Agreement is consistent with the general plan and any applicable specific plan.

9.60.140 Approval of Development Agreement

The Development Agreement shall be approved by the adoption of an ordinance. Upon the adoption of the ordinance, the City shall enter into the Development Agreement by the execution thereof by the City Manager.

9.60.150 Amendment and Cancellation

- A. Either the City or the applicant or successor in interest thereto may propose an amendment or cancellation in whole or in part of the Development Agreement.
- B. The procedure for proposing and approving an amendment to or cancellation in whole or in part of the Development Agreement shall be the same as the procedure for entering into a Development Agreement.
- C. Except as provided for in Section 9.60.180, the development agreement may only be amended or cancelled in whole or in part by the mutual consent of all parties to the Development Agreement.

9.60.160 Recordation

No later than ten days after the City enters into the development agreement, the City Clerk shall record with the County Recorder a copy of the Development Agreement.

9.60.170 Periodic Review

- A. The City Council shall review the Development Agreement at least every twelve months from the date the development agreement is entered into.
- B. The Planning Director shall give the applicant or successor in interest thereto at least ten days' advance notice of the time at which the City Council will review the Development Agreement.
- C. The applicant or successor in interest thereto shall demonstrate good faith compliance with the terms of the Development Agreement.
- D. If, as a result of such periodic review, the City Council finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with the terms or conditions of the Development Agreement, the City Council may commence proceedings to enforce, modify or terminate the Development Agreement.

9.60.180 Modification or Termination

- A. If upon a finding under Section 9.60.170, the City Council determines to proceed with modification or termination of the Development Agreement, the City Council shall give notice to the applicant or successor in interest thereto of its intention to do so. The notice shall contain:
 - 1. The time and place of the hearing;
 - 2. A statement as to whether or not the City Council proposes to modify or terminate the development agreement;
 - 3. Any proposed modification to the development agreement; and
 - 4. Other information which the City Council considers necessary to inform the applicant or successor in interest thereto of the nature of the hearing.

- B. At the time set for the hearing on the modification or termination, the City Council may take such action as it deems necessary to protect the interests of the City.

9.60.190 Irregularity in Proceedings

No action, inaction, or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission as to any matter pertaining to the application, notice, finding, record, hearing, report, recommendation, or any other matters of procedure whatsoever unless after an examination of the entire record the court is of the opinion that the error complained of was prejudicial and that a different result would have been probable if the error had not occurred or existed.

Chapter 9.61 Signs

Sections:

9.62.010	Sign Code
9.62.020	Findings, Purposes, and Policies
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9.61.140	Exempt Signs
9.61.150	Permanent Signs Exempt from Architectural Review Board
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9.61.260	Enforcement

9.61.010 Sign Code

The Uniform Sign Code, 1997 Edition, three copies of which are on file in the office of the City Clerk for use and examination by the public, is hereby adopted as the structural sign code for the City of Santa Monica and shall be referred to, together with all sections of this Chapter, as the Santa Monica Sign Code. If there is any conflict between the provisions of the Uniform Sign Code, 1997 Edition, and this Chapter, the provisions of this Chapter shall control.

9.61.020 Findings, Purposes, and Policies

The City Council finds and declares:

- A. It is the intent of the Santa Monica Sign Code to preserve and enhance the aesthetic, traffic safety and environmental values of the city while at the same time providing for channels of

communication to the public, including, but not limited to, identifying and advertising businesses within the City. The purpose of this Code is to provide minimum standards to safeguard life, health, property and public welfare through the regulation and control of the design, materials, construction, size, location and maintenance of signs and sign structures;

- B. It is the City's policy to regulate signs in a manner which is consistent with the free speech provisions of the United States Constitution and the liberty of speech provisions of the California Constitution, by enacting regulations which are content neutral;
- C. An excess of large, ugly, intense signs causes a visual blight on the appearance of the City by detracting from views of structures and open space. This visual blight adversely affects the aesthetic quality of life and traffic safety in Santa Monica for residents, businesses, pedestrians, tourists, and persons in vehicles. In order to promote the appearance of the City, while protecting the rights of sign owners to expression and identification, the regulation of existing and proposed signs is necessary to protect the public health, safety and general welfare;
- D. The purpose of the Santa Monica Sign Code is to encourage signs which are integrated with and harmonious to the buildings and sites which they occupy, to eliminate excessive and confusing sign displays, to preserve and improve the appearance of the City as a place in which to live and to work and as an attraction to nonresidents who come to visit or trade, and to restrict signs which increase the probability of accidents by distracting attention or obstructing vision;
- E. The Santa Monica Sign Code provides minimum standards to safeguard life, safety, property and public welfare by reviewing design and by regulating size, construction, location, electrification, operation and maintenance of all signs and sign structures exposed to public view within the City. The visual appearance and traffic safety of the City cannot be achieved by measures less restrictive than the procedures and standards of this Chapter;
- F. The City has extensive and wide-ranging programs regulating the aesthetics of its public streetscape and private development; and
- G. It is also the intent of the City to regulate signs consistent with California Business and Professions Code Section 5490—5497 to the maximum extent permitted by State law.
- H. To ensure that the Santa Monica Sign Code is neutral with respect to noncommercial messages, subject to the property owner's consent, a noncommercial message of any type may be substituted for any duly permitted or allowed commercial message or any duly permitted or allowed noncommercial message, provided that the sign structure or mounting device is legal without consideration of message content. Such substitution of message may be made without any additional approval or permitting. This provision prevails over any more specific provision to the contrary within this Chapter. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, This provision does not create a right to increase the total amount of signage on a parcel, lot, or land use; does not affect the requirement that a sign structure or mounting device be properly permitted; does not allow a change in the physical structure of a sign or its mounting device; does not allow the substitution of an off-premises commercial message in place of an on-premises commercial message; does not allow one particular on-premises commercial message to be substituted for another without otherwise complying with this Sign Code; and does not excuse compliance with an approved sign program.

9.61.030 Definitions

The following words and phrases shall have the following meanings when used in this Chapter:

- A. **Abandoned Sign.** A sign which no longer advertises or identifies a legal business establishment, product or activity.
- B. **Alteration.** Any change in copy, color, size or shape, which changes appearance of a sign, or a change in position, location, construction or supporting structure of a sign, except that a copy change on an attraction or reader board is not an alteration.
- C. **Animated Sign.** Any sign which has any visible moving part, flashing or osculating lights, visible mechanical movement of any description, or other apparent visible movement achieved by any means.
- D. **Area of Sign.** The surface area of a sign calculated by enclosing the extreme limits of all lettering, background, emblem, logo, representation, or other display within a single continuous perimeter composed of squares or rectangles with no more than eight lines drawn at right angles. On signs with more than one face, that face or those faces visible from any one direction at one time will be counted at one hundred percent of visible area; other faces will be counted at fifty percent of their area in calculating total sign area.
- E. **Attraction or Reader Board.** Any sign having changeable copy for the purpose of advertising events, sales, services or products provided on the site.
- F. **Awning.** A shelter extending from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.
- G. **Awning Sign.** Any sign painted on or attached to or supported by an awning.
- H. **Balloon Sign.** A lighter-than-air gas-filled balloon tethered in a fixed location.
- I. **Billboard or Poster Panel.** An off-premises sign.
- J. **Building Frontage.** The linear dimensions of a building which faces upon a public street, projected along the street property line. Where a building faces two or more streets, the frontage containing the principal street address shall be designated as the building frontage.
- K. **Building Identification Sign.** Any sign containing the name or address of a building and may include hours of operation and emergency information, such sign being located on the same site as the structure.
- L. **Changeable Copy Sign.** An attraction or reader board.
- M. **Commercial Sign.** Any sign with wording, logo, or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service, profession, commodity, event, person, institution, or other commercial activity or otherwise contains commercial speech.
- N. **Commercial Speech.** Any message proposing a commercial transaction or related to the economic interests of the speaker and its audience.
- O. **Emitting Sign.** A sign which emits sound, odor, or visible matter such as smoke or steam.
- P. **Free-Standing Sign.** Any sign which is permanently affixed in or upon the ground, supported by one or more structural members, with air space between the ground and the sign face.

- Q. **Grade.** The level of the site at the property line located at the closest distance to the sign.
- R. **Ground Sign.** Any sign which is neither attached to nor part of a structure and which is permanently affixed in or upon the ground with no air space between the ground and the sign face.
- S. **High Rise Sign.** Any sign located on a building four or more stories in height that is between the top of the parapet or high point of the building, exclusive of penthouse structures, and the horizontal line not more than fifteen feet below the top of the parapet or high point of the building on the side of the building to which the sign is affixed.
- T. **Illegal Sign.** Any sign placed without proper approval or permits as required by the Santa Monica Municipal Code at the time of sign placement. Illegal sign shall also mean any sign placed contrary to the terms or time limits of any permit and any nonconforming sign which has not been brought into compliance with the provisions of Sections 9.61.240 and 9.61.250 of this Chapter.
- U. **Illuminated Sign.** Any sign for which an artificial source of light is used in order to make readable the sign's message, including internally and externally lighted signs and reflectorized, glowing or radiating signs.
- V. **Light Bulb String.** A display consisting of a row or rows of bare light bulbs.
- W. **Logo, Logogram, or Logotype.** An emblem, letter, character, pictograph, trademark, or symbol used to represent the firm, organization, entity, or product.
- X. **Marquee.** A permanent roof-like shelter extending from part or all of a building face and constructed of some durable material which may or may not project over a public right-of-way.
- Y. **Marquee Sign.** Any sign painted on or attached to or supported by a marquee.
- Z. **Monument Sign.** A ground sign having a horizontal dimension greater than its vertical dimension.
- AA. **Mural.** A picture on an exterior surface of a structure.
- BB. **Neon Signs.** A sign with tubing that is internally illuminated by neon or other electrically charged gas.
- CC. **Noncommercial Sign.** Any sign which is not a commercial sign as defined herein.
- DD. **Noncommercial Speech.** Any message which is not commercial speech as defined herein.
- EE. **Nonconforming Sign.** A sign which was validly installed under laws or ordinances in effect at the time of its installation, but which is in conflict with the provisions of the Santa Monica Sign Code.
- FF. **Off-Premises Sign.** A commercial sign which displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution, or other commercial message which is generally conducted, sold, manufactured, produced, offered or occurs elsewhere than on the premises where such sign is located.
- GG. **On-Premises Sign.** A commercial sign that is other than an off-premises sign.
- HH. **Permanent Sign.** Any sign that is a legally placed sign which is intended to be and is so constructed as to be of a lasting and enduring condition, remaining unchanged in character, condition (beyond normal wear) and position and in a permanent manner affixed to the ground, wall, or building.
- II. **Pole or Post Sign.** A free-standing sign.
- JJ. **Portable Sign.** Any movable sign not permanently attached to the ground or a building.
- KK. **Projecting Sign.** A sign which projects from and is supported by a wall or parapet of a building with the display surface of the sign in a plane perpendicular to or approximately perpendicular to the wall.

- LL. **Public Sign.** A sign, on public property open to the public which is erected or maintained by a public agency, or which serves to fulfill a permit condition imposed by a public agency, such as a sign erected to preserve the safe and efficient control of traffic and parking or to provide notification of essential governmental services.
- MM. **Pylon Sign.** A ground sign having a vertical dimension greater than its horizontal dimension.
- NN. **Revolving or Rotating Sign.** An animated sign.
- OO. **Roof Sign.** Any sign erected upon a roof, parapet, or roof-mounted equipment structure and extending above a roof, parapet, or roof-mounted equipment structure of a building or structure.
- PP. **Sign.** Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and supports or anchoring thereof.
- QQ. **Sign Cans.** A sign with a metal can and an internally illuminated plastic face. A change in the face of a sign can is considered to be a change in copy and not subject to review if it affects only the message of the sign, and does not change the color of background or letters, size or location of letters, or otherwise alter the general appearance of the sign. Painted or panel signs shall be reviewed similarly to sign cans.
- RR. **Sign Face.** An exterior display surface of a sign including non-structural trim exclusive of the supporting structure.
- SS. **Sign Program.** A coordinated program of all signs, including exempt and temporary signs for a business, or businesses if applicable, located on a development site. The sign program shall include, but not limited to, indications of the locations, dimensions, colors, letter styles and sign types of all signs to be installed on a site.
- TT. **Site.** All the contiguous ground area legally assembled into one development location.
- UU. **Special Event Sign.** A sign authorized through a community events permit issued pursuant to Santa Monica Municipal Code Chapter 4.68.
- VV. **Statue.** A three-dimensional representation, including a sculpture. A statue that is related to the advertisement of any product or service or the identification of any business is a sign.
- WW. **Super Graphic.** A painted design which covers all or a major portion of a wall, building or structure.
- XX. **Temporary Sign.** Any sign, not permanently attached to the ground or a structure, which is installed or placed for a limited duration.
- YY. **Total Sign Area.** The sum of the areas of all externally viewable signs on a site, excluding the area of any signs exempt from Architectural Review Board approval under Sections 9.61.140, 9.61.150, and 9.61.160.
- ZZ. **Upper Level Sign.** Any sign mounted on a building that is placed in whole or in part between thirty inches above the second-floor floor line and the top of a parapet or roof line, but does not include a high rise sign.
- AAA. **Vehicle Sign.** Any sign permanently or temporarily attached to or placed on a vehicle or trailer.

- BBB. **Wall Sign.** Any sign attached to or painted on the wall of a building or structure in a plane parallel or approximately parallel to the plane of said wall.
- CCC. **Window Sign.** Any sign viewable through and/or affixed in any manner to a window or exterior glass door such that it is viewable from the exterior, including signs located inside a building but visible primarily from the outside of the building.

9.61.040 Sign Permit

In addition to any other permit required by this Code, a sign permit shall be obtained from the Architectural Review Board prior to placing, changing, altering, or displaying any sign unless specifically exempted by this Code. No sign permit shall be required where the only work to be performed is the repair, maintenance, or replacement of a lawful and conforming sign, the repair or maintenance of a lawful nonconforming sign, or the replacement or repair of a destroyed sign except when such sign is required to be removed in accordance with Section 9.61.240.

9.61.050 Landmarks Commission Review

In the case of any new sign proposed to be placed, changed, altered or displayed on a designated City landmark or structure located in a designated historic district, a sign permit must be obtained from the Landmarks Commission, instead of the Architectural Review Board, through the approval of a certificate of appropriateness application. Such signage applications shall be subject to the same standards specified in this Chapter. The Landmarks Commission shall have the same powers as the Architectural Review Board to approve, deny, modify or approve adjustments to sign applications. All signage decisions by the Landmarks Commission may be appealed to the Planning Commission. The Landmarks Commission Secretary shall have the same powers as the Architectural Review Board Secretary in the administrative approval of sign permits.

9.61.060 Fees

The City Council shall from time to time amend by resolution following a public hearing a schedule of fees for applications, permits, sign adjustments, appeals, and other approvals under this Chapter.

9.61.070 Sign Permit Application Procedures

- A. Applications for sign permits shall be made on forms provided by the Planning Department and shall be accompanied by the following material:
1. Site Plan. Scale plans indicating the location of existing signs to be retained or removed and proposed new signs.
 2. Existing Building Elevation. Scale drawings indicating locations of all existing signs on the site or building that are to be retained and indicating the location of all existing signs on the site or building that are to be removed. Dated and signed color photographs (not slide transparencies) at least three inches by three inches minimum in size of all existing signs.
 3. Proposed Building Elevations. Scale drawings indicating locations of proposed signs and existing signs that are to be retained on the site.
 4. Sign Illustration. Scale drawing indicating dimensions, colors, materials, copy, illumination, and exterior structural fixtures of each sign on the site.
 5. Sign Program. A sign program submitted in accordance with the guidelines and standards of the Architectural Review Board shall be required for all new projects and building remodels which directly affect existing signs and for any change in a sign in a multitenant building.

6. Other Information. Other information required by the guidelines and standards of the Architectural Review Board.
- B. Within 6 months after the effective date of this Chapter, the Architectural Review Board shall prepare, and the Planning Commission shall approve, a standard application form meeting the requirements of this Section.

9.61.080 Review of Sign Permit Applications

The Secretary of the Architectural Review Board shall review all sign applications to determine if the application is complete. If the sign application can be administratively approved pursuant to Section 9.61.120, such administrative approval shall occur within 10 days after the application is deemed complete. If the sign application cannot be administratively approved, the application shall be reviewed by the Architectural Review Board at its next regularly scheduled meeting unless that meeting would occur less than fourteen days after the application is deemed complete. The sign permit application shall be processed in accordance with the provisions of Section 9.61.070 of this Code.

9.61.090 Action on Sign Permit Applications

- A. The Architectural Review Board, or the Planning Commission on appeal, shall approve, approve with modification or conditions, or deny the sign permit application. A sign application for signs meeting the size, construction, location, electrification, operation, and other applicable provisions of this Chapter shall be approved without modifications or conditions unless the Architectural Review Board makes one or more of the following findings:
 1. That the shape, design, placement, color, style or quantity of text, illumination, or reflected light of a sign or signs conflicts or interferes with traffic, both vehicular and pedestrian, from a public safety standpoint, by distracting attention or obstructing vision;
 2. That the shape, design, placement, color, style or quantity of text, illumination, or reflected light of a sign or signs is incongruous with or detracts from the distinct architectural or historic design or character of the building to which the sign is affixed or of the neighborhood in which the sign is located;
 3. The sign or signs obscures other signs from primary view or dominates its immediate vicinity to such an extent as to detract from the visibility of other signs, buildings of architectural or historic significance, or public view corridors.
- B. If the Architectural Review Board denies, modifies, or conditionally approves a sign application pursuant to this Section, it shall state with particularity the factual bases justifying the findings and shall afford the applicant an opportunity to submit a revised application to remedy the inadequacies of the original sign application.
- C. The Architectural Review Board shall not deny a sign application because of the contents or message of a sign or direct that the contents or message of a sign be altered or modified as a condition of approval.
- D. The Secretary of the Architectural Review Board shall certify the final action of the Architectural Review Board, or Planning Commission on appeal, on the sign permit application and when required, on any permit to be issued by the Building and Safety Division.

- E. Approval of the sign permit application does not imply approval by the Building and Safety Division from which one or more permits may also be required.
- F. The Secretary of the Architectural Review Board shall maintain a record of all applications filed under this Chapter and of all action of the Architectural Review Board or Planning Commission of such applications.

9.61.100 Appeals

Any decision of the Architectural Review Board under this Chapter may be appealed to the Planning Commission by the applicant or any interested person, or by any member of the City Council or Planning Commission. Notice of any appeal from the ruling of the Board must be filed within ten calendar days of the date that such ruling is made, and must be accompanied, except in the case of a review by request of a member of the City Council or the Commission, by the fee established by Chapter 9.63. When such an appeal is made from a ruling of the Board, the Commission shall hear the appeal within thirty days of the receipt of said notice of appeal unless unique and unforeseeable circumstances prevent the hearing of the appeal at that time. The Commission shall base its decision on the evidence submitted to it at said hearing, and upon the record from the Board and such other records as may exist in the case. The decision of the Commission upon such appeal, relative to any matter within the jurisdiction of the Board, shall be final.

9.61.110 Time for Exercising Sign Permit and Proof of Compliance

A sign permit shall become null and void if the sign for which the approval was granted and all conditions imposed in connection with the approval have not been completed within 6 months of issuance of the sign permit or, in the case of a sign approved for a building not yet completed, 6 months after the issuance of the certificate of occupancy. Within 30 days of the completion of the sign, the applicant shall file with the Planning Department a color photograph at least 3 inches by 3 inches minimum in size showing completion of the sign or sign program in accordance with the sign permit.

9.61.120 Administrative Approval of Sign Permits

The Secretary of the Architectural Review Board or his or her designee is empowered to review and approve those signs that conform to the requirements of this ordinance and to written guidelines established by the Architectural Review Board and approved by the Planning Commission. Such guidelines shall include, but not be limited to, provisions for administrative approval in the following situations:

- A. Where the sign application complies with a sign program that has been approved by the Architectural Review Board or Planning Commission in conjunction with the design review of the building to which the sign is affixed.
- B. Where the sign application is for a change in the face of a sign, and does not involve alteration, additional or altered illumination, or relocation of the physical sign.

9.61.130 Sign Adjustment

- A. In order to assure adequate business identification, a variance from any nonstructural provision of this Chapter may be granted upon the filing of an application for sign adjustment and subject to the following findings:
 - 1. The strict application of the provisions of this Chapter would result in practical difficulties or unnecessary hardships for the business or property owner which would be inconsistent with the purposes of this Chapter and which would arise from unique physical or topographic circumstances or conditions of project design;

2. The granting of the requested variance would not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;
 3. The granting of the requested variance would not be incompatible with other nearby signs, other elements of street and site furniture and with adjacent structures. Compatibility shall be determined by the relationships of the elements of form, proportion, scale, color, materials, surface treatment, overall sign size and the size and style of lettering;
 4. The granting of the variance would not be inconsistent with the purposes of this Chapter.
- B. A sign adjustment application shall be processed in accordance with the procedures for a sign permit application.
- C. For purposes of this Section, the prohibitions contained in Section 9.61.180 shall be deemed to be nonstructural provisions of this Chapter. However, after February 1, 2000, no applications for sign adjustments may be accepted to request retention of any nonconforming signs subject to Section 9.61.240.

9.61.140 Exempt Signs

The following signs are exempt from the provisions of the Sign Code:

- A. All signs which are placed inside a structure or building and which are either not visible through windows or building openings or are located a minimum of five feet from such windows or openings and from an adjacent window merchandise display base, if any.
- B. Signs authorized by a community events permit issued pursuant to Santa Monica Municipal Code Chapter 4.68.
- C. Pole banners and over-the-street banners authorized pursuant to Santa Monica Municipal Code Section 4.08.500.
- D. Noncommercial signs provided that they are not of the type prohibited by subsections (1), (2),(3),(4), (9), (10), (11), or (12), of Section 9.61.180(A) or by Section 9.61.230.

9.61.150 Permanent Signs Exempt from Architectural Review Board Approval

The following signs are exempt from the permit requirements of this Code. The use of these signs does not affect the amount or type of signage otherwise allowed by this Chapter. All signs listed in this Section must be in conformance with all other applicable requirements of this Code:

- A. ***Building Identification Signs.*** Building identification signs not to exceed 2 square feet in area which are authorized based on the City's compelling health and safety interest in ensuring that safety personnel and members of the public can immediately identify the name and/or location of the property, the hours of operation and emergency information;
- B. ***Information Sign.*** Exterior signs erected on or immediately adjacent to an entrance, exit, rest room, office door, telephone or similar property feature provided that the sign does not exceed 2 square feet in area for each sign (which typically contains information such as "no parking," "entrance," "service entrance," "restrooms," "manager," and "exit") so long as the number of exempt exterior signs do not exceed 2 per parcel for each street frontage.

- C. **Public Signs.** Public signs provided that they are not of the type prohibited by subsections (1), (2), (3), (8), (9), (10), (11), and (12) of Section 9.61.180(A).
- D. **Tablets and Plaques.** Tablets and plaques of metal or stone, installed by an historical agency, including names of buildings and date of erection, and not exceeding 24-four inches in any dimension.
- E. **Theatre Sign.** Theatre sign copy or display changes on existing theatre marquee signs or permanently affixed display cases.
- F. **Banners, Flags and Pennants.** Banners, flags, and pennants that do not directly advertise the business or activity located on the building site, provided that no more than 3 such banners, flags, or pennants for each site are exempt under this Section.
- G. **Change of Copy of Billboards.** The change of copy of any off-premises sign.

9.61.160 Temporary Sign Regulations

The following signs are exempt from the permit requirements of this Code. The use of these signs does not affect the amount or type of signage otherwise allowed by this Chapter. All signs listed in this Section must be in conformance with all other applicable requirements of this Chapter and the City's Municipal Code:

- A. **Basic Requirements Governing Temporary Signs.**
 - 1. **Illumination.** No temporary sign shall be internally or externally illuminated.
 - 2. **Location.**
 - a. Except as provided by this Section, no temporary sign shall extend into, on or over the public right-of-way of any street, alley, or other public property.
 - b. No temporary sign shall extend into the hazardous visual obstruction zone as established by Santa Monica Municipal Code Section 9.21.180, Hazardous Visual Obstructions.
 - 3. **Maintenance.** Temporary signs shall be kept neat, clean and in good repair. Signs which are faded, torn, damaged or otherwise unsightly or in a state of disrepair shall be immediately repaired or removed.
 - 4. **Placement.** No temporary sign shall be attached to trees, shrubbery, utility poles, or traffic control signs or devices. They shall not obstruct or obscure primary signs on adjacent premises.
 - 5. **Public Hazard.** No temporary sign shall be erected or maintained which, by reason of its size, location or construction, constitutes a hazard to the public or impairs accessibility.
 - 6. **Collection and Retrieval of Temporary Signs Placed in the Public Right-of-Way.**
 - a. The City may collect temporary signs placed in the public right-of-way which are not authorized by this Chapter.
 - b. Each sign collected will be stored for a minimum of 30 days.
 - c. Notice will be mailed or otherwise provided within 3 business days of the date of collection to the owner of each sign if the ownership is reasonably discernible from the sign or is on file with the City's Community Maintenance Department.

- d. The owner of a sign may retrieve a sign collected by the City within 30 days of the collection date. The owner must present proof of ownership of the sign and pay a sign retrieval fee in an amount established by resolution of the City Council.

B. **Authorized Temporary Signage in Any Residential Zone.** In any residential zone, temporary signage shall be allowed for each and every lot without issuance of a permit and shall not affect the amount of type of signage otherwise allowed by this Code. This signage shall not be restricted by content, but usually and customarily relates to an event such as a real estate sale, garage sale, home construction or remodeling, etc. Signage shall be allowed for each lot as follows:

1. One temporary on-premises sign on property that is for sale, lease or rental not exceeding 6 square feet in total area and not more than 6 feet in height; plus no more than 3 12-inch by 4-inch riders, plus no more than one 6-inch by 18-inch pennant for each 20 linear feet for street frontage, provided the sign is removed within 15 days from the sale, lease or rental of the property. An additional sign of the same size may be erected if the property borders a second street and the signs are not visible simultaneously. On tracts of land of more than 2 acres in residential zones the sign area may be increased to 32 square feet. In no case shall the sign or signs be erected for more than 12 months.
2. One temporary on-premises sign on property that is undergoing construction or remodeling not exceeding 24 square feet each in area and not more than 6 feet in height above grade and limited to one sign for each street frontage provided the sign is removed within 7 days of completion of any construction or remodeling.
3. One temporary on-premises sign not exceeding 4 square feet in area which is erected a maximum of 2 times per calendar year for a maximum of 2 days each display and which is removed by sunset on any day it is erected.
4. Four temporary signs not exceeding 6 feet in height placed on private property within 5 hundred feet of a property for sale or lease during the hours that the property is open to the public for viewing.
5. Public signs provided that they are not of the type prohibited by subsections (1), (2), (3), (9), (10), (11), or (12) of Section 9.61.180(A).

C. **Authorized Temporary Signage in Any Commercial Zone.** In any commercial or industrial zone, temporary signage shall be allowed for each and every lot without issuance of a permit and shall not affect the amount or type of signage otherwise allowed by this Code. This signage shall not be restricted by content, but is usually and customarily related to an event such as a real estate sale, construction or remodeling, etc. The signage shall be allowed for each lot as follows:

1. One temporary on-premises sign which is located on the building that is for sale, lease, or rental, not exceeding 24 square feet each, are not higher than 30 inches above the 2nd floor line, and which are limited to one sign for each building, and must be attached to the building, provided said signs are removed within 15 days from the sale, lease or rental of the property. Properties with a lot width of 50 feet or less shall be limited to 16 square feet per site. An additional sign of the same size may be erected if the property borders a second street and the signs are not visible simultaneously.
2. One temporary on-premises sign on property that is ongoing construction or remodeling not exceeding 24 square feet each in area and not more than 6 feet in height above grade and

limited to one sign for each street frontage provided the sign is removed within 7 days of completion of any construction or remodeling.

3. One temporary on-premises banner on a business that is newly opened not exceeding 20 percent of a business' front building façade area or one 100 square feet, whichever is less, not extending above the second floor line, and limited to one 60-day period.
4. One temporary on-premises banner on a business where, due to construction activities, the front façade to the building is blocked from the street by barricades or related construction materials or equipment, not exceeding 20 percent of a business' front building façade area or 100 square feet, whichever is less, not extending above the second-floor floor line, and limited to the time that the front façade is blocked from the street.
5. Temporary signs not exceeding 16 square feet in area erected at the same time as the temporary uses allowed by Santa Monica Municipal Code Part 9.31.360, or any successor legislation thereto. The signage shall be allowed for the same duration as the temporary use.
6. Temporary window signs not to exceed twenty percent of the first floor's total frontage glass area and limited to two thirty-day periods in any calendar year for each site. Temporary window signs shall not extend above the second floor line.
7. Public signs provided that they are not of the type prohibited by subsections (1), (2), (3), (9), (10), (11), or (12) of Section 9.61.180(A).

D. Within the Main Street Commercial Zoning District, each business shall be allowed one temporary on-premises sign, if the temporary sign complies with the following requirements:

1. The sign shall not be larger than 10 square feet in size.
2. The sign face shall be no wider than two and a half feet and no taller than four feet and limited on two sides/faces with a total square footage of sign area not to exceed 20 square feet.
3. The sign shall remain portable and shall not be attached or anchored to any public or private property.
4. The sign is not of the type prohibited by subsections (1), (2), (3), (4), (6), (7), (8), (9), (10), (11), or (12) of Section 9.61.180(A) by Section 9.61.230.
5. The sign shall be removed when the business is closed.

E. Temporary signs are prohibited signs except as provided by this Section or otherwise exempt pursuant to Section 9.61.140.

9.61.170 Permitted Signs

A. When reviewed and approved by the Architectural Review Board, signs shall be permitted under the following provisions:

1. **Attraction or Reader Boards.** Attraction or reader boards so long as they do not exceed 20 percent of total allowable sign area or are otherwise authorized pursuant to Section 9.61.190(G). Copy must be changed periodically during each calendar year.
2. **Awning Signs.** Awning signs painted or printed on the surface of the awning material.
3. **Ground Signs.** One ground sign for each site in the commercial and industrial districts. A monument type sign is permitted so long as it does not exceed six feet in height above grade. A pylon type sign is permitted as long as it does not exceed thirty inches in width and does

not exceed sixteen feet in height above grade. The maximum area of one side of a ground sign, including its base, is forty square feet.

4. ***Light Bulb Strings.***
5. ***Marquee Signs.*** Marquee signs that do not extend more than 12 inches from the surface of the marquee, nor provide less than 8 feet of clearance above ground level are permitted.
6. ***Statues.***
7. ***Wall Signs.*** Wall signs so long as the display surface of the sign does not extend more than 12 inches from the wall, is parallel with the wall, does not project above the top of the wall or parapet or more than 30 inches above the second-floor floor line in multistoried buildings, and does not contain copy or lighting on any surface parallel with the wall other than the sign face. A wall sign may be located on the sloping surface of a roof, with no air space between the roof and the sign, may not project above the high point of the roof and may not be more than 12 inches in depth.
8. ***Permanent Window Signs.*** Permanent window signs so long as the sign area does not exceed 20 percent of the first floor's total frontage glass area.
9. ***Projecting Signs.*** Projecting signs so long as the sign is no greater than four and one half square feet.

9.61.180 Prohibited Signs

- A. The following signs, and any sign not authorized by Section 9.61.150 or Section 9.61.170, are prohibited:
 1. ***Animated Signs.*** Animated signs, except that:
 - a. The City may use animated signs to preserve roadway safety and traffic circulation; and
 - b. Primary and secondary schools may use animated signs on school property for school purposes.
 2. ***Balloon Signs.***
 3. ***Emitting Signs.*** Emitting signs except that devices for communicating with customers at drive-in restaurants, automated bank tellers, and drive-through banks may use sound communication.
 4. ***Free-Standing and Pole Signs.***
 5. ***Miscellaneous Signs and Posters.*** Miscellaneous signs and posters tacked, painted, posted or otherwise affixed on the walls of a building, or on a tree, pole, fence or other structure, and visible from a public way.
 6. ***Off-Premises Signs.***
 7. ***Paper, Cloth or Plastic Streamers and Bunting.*** Paper, cloth, or plastic streamers and bunting.
 8. ***Portable Signs,*** except temporary signs authorized pursuant to Section 9.61.160.

9. ***Roof Signs.***
10. ***Upper Level Signs.***
11. ***Vehicle Signs.*** No person shall park any vehicle or trailer on a public right-of-way or public property or on a private property so as to be visible from a public right-of-way, which has attached thereto or located thereon any sign or advertising device for the basic purpose of providing advertisement of products or directing people to a business or activity located on the same or nearby property. This Section is not intended to apply to standard advertising or identification practices where such signs or advertising devices are painted on or permanently attached to a business or commercial vehicle.
12. ***High-Rise Signs.***

9.61.190 Total Sign Area Permitted by District

- A. The total sign area factors set forth in this Section govern the aggregate square footage of all nonexempt signs externally placed or externally visible at a given site. The factors are related to the building or store frontage measured along the site street address.
- B. The total operative frontage dimension for structures located on a street corner site is one and one-half times the building's address frontage. For such corner locations, no more than two-thirds of the total allowable sign area shall be permitted facing on one or the other street.
- C. For all multiple-use buildings in commercially or industrially zoned districts, the size of signs pertaining to each business or use is governed by that portion of the building frontage occupied by that business or use; the total sign program is governed by the total building frontage. If in addition to any entrance from public streets there is a public entrance from an alley or from a parking lot, additional sign area of one-half square foot per foot of that building frontage is allowed on that side of the premises, not to exceed 20 square feet. If there is no public entrance, signage on that side is limited to a business identification sign, not to exceed 2 square feet.
- D. Notwithstanding the maximum sign area calculated by use of these factors, no single sign shall exceed 100 square feet in area at any location.
- E. Notwithstanding the maximum sign area calculated by use of these factors, no business in a commercial or industrial district is required to have signage of less than 25 square feet in area.
- F. The maximum sign area is as follows:
 1. **R1/OP1**—Single Family Residential District. Applicable exempt signs;
 2. **R2/OPD**—Duplex Residential Districts. Applicable exempt signs;
 3. **All Multiple Residential Districts Except the Beachfront District.** A maximum of one-fourth square foot of sign area for each linear foot of building frontage with the total nonexempt sign area not to exceed 25 square feet. Externally illuminated signs are permitted for the purpose of building name and address identification;
 4. **Hotels in R4 High Density Residential District.** A maximum of one square foot of sign area for each linear foot of building frontage. Internally illuminated signs are permitted;
 5. **All Downtown Districts and Beachfront Districts.** For other than street corner locations, a maximum of one square foot of sign area for each linear foot of building or store frontage. For street corner locations, a maximum of one square foot of sign area for each linear foot of building or store frontage for each street facing frontage. The provisions of Section 9.61.190(B) shall not apply;

6. **All Other Commercial and Industrial Districts.** A maximum of one square foot of sign area for each linear foot of building or store frontage;
 7. **Off-Street Parking Districts.** The same as the sign requirements in the appropriate adjacent residential district.
- G. In the NC and Downtown Districts, one changeable copy sign that does not exceed one-and one-half feet by 2 feet affixed either to the exterior of the building or to a location visible through a window shall not be included as part of the total allowable sign area for a business.

9.61.200 Bayside District Specific Plan Area

The standards for signs contained in the approved Bayside District Specific Plan shall prevail over conflicting provisions contained in Sections 9.61.150, 9.61.170, 9.61.180, and 9.61.190 with respect to signs on buildings located within the Bayside District Specific Plan area.

9.61.210 Maintenance

All signs and sign support structures, together with all of their supports, braces, guys and anchors, shall be kept in repair and in proper state of preservation. The display surfaces of all signs shall be kept neatly painted or posted at all times.

9.61.220 Consent of Property Owner

No person, except a public officer or employee in the performance of a public duty, or a private person in the giving of a legal notice, shall paste, post, paint, print, nail or tack or otherwise fasten any card, banner, handbill, sign, poster, advertisement or notice of any kind upon any property, without the written consent of the owner, holder, lessee, agent or trustee thereof.

9.61.230 Signs on Street

- A. No person shall erect, suspend or maintain a sign on, across, or above any street, alley or public property, or any portion thereof, except as may be allowed or required by the Municipal Code, or the laws of the State or of the United States.
- B. Nothing in the Santa Monica Sign Code shall be deemed or construed to prohibit, upon this issuance of the permits required herein, the erection, suspension, or maintenance of any such sign within or at the recognized boundary of the City, on, across, or above any such streets, alleys, or public places or any portion thereof, such signs to bear exclusively the name of such City and any appropriate words of welcome, or information concerning said City, without the addition of any words, advertising, figure or devices of any kind.

9.61.240 Removal or Modifications of Prohibited Nonconforming Signs

- A. Signs that have been lawfully placed before the effective date of this Chapter and are not in conformance with the provisions of this Chapter shall be removed or where applicable, modified to conform to the requirements of this Chapter, in accordance with the following schedule:
 1. Animated signs and emitting signs shall be stopped from such activity within 6 months from April 11, 1985.

2. Balloon signs; temporary signs and posters that are visible from a public way; paper, cloth or plastic streamers, flags, pennants and bunting; portable signs; vehicle signs that are not in conformance with Section 9.61.180(A)(11) of this Chapter; and temporary window signs above the first story level shall be removed within six months from April 11, 1985.
 3. Traffic sign replicas shall be removed or modified to comply with the provisions of this Chapter within six months from April 11, 1985.
 4. Freestanding, roof, upper level, projecting and off-premises signs, including those signs which were previously animated or emitting signs shall be removed or modified to conform to the requirements of this Chapter within 15 years from the effective date of this Chapter unless the sign was designated a meritorious sign by the Santa Monica City Council on March 22, 2000. Notwithstanding the preceding sentence, if the character defining features of a meritorious sign are altered, the sign shall be removed or where applicable, modified to conform to the requirements of this Chapter.
- B. Notwithstanding any other provision of this Section, any nonconforming sign that would otherwise be prohibited by this Chapter shall be removed or modified to conform to the requirements of this Chapter upon any of the following:
1. If the owner, outside of a change in copy, requests permission to remodel a sign, including the replacement of electrical parts and tubing of a neon sign involving a change in the external appearance or intensity of illumination of the sign, or expands or enlarges the building or land use upon which the sign is located, and the sign is affected by the construction, enlargement, or remodeling, or the cost of construction, enlargement, or remodeling of the sign exceeds fifty percent of the cost of reconstruction of the building. For purposes of this subsection, remodel does not include normal repair or maintenance of a sign;
 2. If the owner seeks relocation of the sign;
 3. If the sign has been more than 50 percent destroyed, and the destruction is other than facial copy replacement, and the display is not repaired within 90 days of the date of its destruction;
 4. If the City and the owner of the sign agree to its removal on a given date;
 5. If the use of the sign has ceased, or the structure upon which the sign is located has been abandoned by its owner, for a period of not less than 90 days;
 6. If the sign is or may become a danger to the public or is unsafe as determined by the Building Officer;
 7. If the sign constitutes a traffic hazard not created by relocation of streets or highways or by acts of the City, as determined by the Director of General Services.
- C. The time period to conform to the requirements of this Chapter shall not be extended because of any repair, maintenance or other permitted remodeling or alteration of a sign.
- D. An extension of time to remove or modify any nonconforming sign subject to this Section may be requested by filing an application on the form approved by the Secretary of the Architectural Review Board and in accordance with the procedures for a sign permit application. The application may be granted only upon a finding that the time for removal or modification set forth in this Section does not provide for a reasonable amortization period commensurate with the investment involved. An application for an extension under this subsection shall be made within two years after April 11, 1985.

- E. Notwithstanding any other provision of the associated enterprise or occupant has this Section, this Section shall not apply to any sign that may not be removed pursuant to the provisions of Business and Professions Code Section 5412.5 but only during the period of time that Business and Professions Code Section 5412.5 remains in force and effect.

9.61.250 Building Officer's Powers

The Building Officer shall have and is hereby granted the power and authority to revoke any sign permit granted hereunder if the sign does not meet all specifications or requirements indicated on the approved permit application and on the approved plans.

9.61.260 Enforcement

- A. The Building Officer and Zoning Inspector are hereby granted the power and authority to issue a notice of violation to the sign owner or to the sign owner's agent or manager for any sign maintained in violation of any provision of this Chapter. Action to correct such violation issued by either the Building Officer or Zoning Inspector shall be commenced by the sign owner or the sign owner's agent or manager within 30 days of the issuance of the notice of violation. Proof of the commencement of action to correct the violation must be furnished to the officer issuing the notice or his or her representative within 30 days of the issuance of the notice of violation.
- B. If the sign owner, or any person responsible for the sign, fails to respond to the notice of violation within 30 days or fails to correct the violation within 60 days, the owner of the premises upon which the sign is located shall be responsible for the removal of the sign and the work shall be done within 60 days following the notice of violation. The Building Officer may cause the removal of the sign in accordance with the abatement procedures set forth in the Municipal Code.
- C. Any signs in conformance with this Code pertaining to enterprises or occupants that are no longer utilizing the site shall be removed from the site or shall have the copy/text obliterated from such signs upon the expiration of 90 days after the associated enterprise or occupant has vacated the premises. Any such sign not removed or modified within the required period shall be considered as abandoned and shall be removed by the Building Officer in accordance with the abatement procedures set forth in the Municipal Code.
- D. Any nonconforming signs pertaining to enterprises or occupants that are no longer utilizing the site shall be removed from the site upon the expiration of 90 days after the associated enterprise or occupant has vacated the premises. Any such sign not removed within the required period shall be considered as abandoned and shall be removed by the Building Officer in accordance with the abatement procedures set forth in the Municipal Code.
- E. A sign removed by the City shall be held for not less than 30 days by the City during which time it may be recovered by the owner upon payment to the City for removal and storage costs. If not recovered prior to the expiration of the 30-day period, then the sign shall be sold in accordance with the procedures for sale of unclaimed property. The proceeds of the sale, less removal, storage, and sale costs, shall be paid to the owner thereof.
- F. The provisions of this Section may be utilized separately from, as an alternative to, in addition to, or in conjunction with any other remedy provided by law.

Chapter 9.62 City Council CEQA Appeals

9.62.010 City Council CEQA Appeals

Any person may appeal to the City Council from the decision of a nonelected decision-making body of the City to certify an environmental impact report, approve a negative declaration or mitigated negative declaration or determine that a project is not subject to Public Resources Code Section 21080 et seq. (California Environmental Quality Act) if that decision is not otherwise subject to further administrative review. Any such appeal must be filed with the Secretary of the nonelected decision-making body within fourteen consecutive calendar days of the date that the decision is made. The appellant shall state the specific reasons for the appeal on an appeal form prepared by the City. The appeal must be accompanied by the required filing fee.

Chapter 9.63 Planning, Zoning, and Land Use Fees

9.63.010 Planning, Zoning, and Land Use Fees

- A. The City Council shall establish by resolution fees for the filing and processing of applications and appeals, and any documents necessary therefore, for any approval required to be obtained from the Planning Director, Zoning Administrator, Planning Commission, Landmarks Commission, Architectural Review Board, or City Council in connection with any planning, zoning, land use or any permit or approval required by Article 9 of this Code.
- B. No application or appeal shall be filed or processed until the fee has been paid as provided for in any resolution adopted pursuant to subsection (A).
- C. Any resolution pursuant to subsection (A) shall govern over any conflicting provision contained in any ordinance adopted prior to the effective date of this Section.

Chapter 9.64 Affordable Housing Production Program

Sections:

9.64.010	Findings and Purpose
9.64.020	Definitions
9.64.030	Applicability of Chapter
9.64.040	Affordable Housing Obligation
9.64.050	On-site Option
9.64.060	Off-site Option
9.64.070	Affordable Housing Fee
9.64.080	Land Acquisition
9.64.090	Fee Waivers
9.64.100	Pricing Requirements for Affordable Housing Units
9.64.110	Eligibility Requirements
9.64.120	Relation to Units Required by Rent Control Board
9.64.130	Deed Restrictions
9.64.140	Enforcement
9.64.150	Annual Report
9.64.160	Principles and Guidelines
9.64.170	Adjustments or Waivers

9.64.010 Findings and Purpose

The City's affordable housing production program requires developers of market rate multi-family developments to contribute to affordable housing production and thereby help the City meet its affordable housing need. As detailed in the findings supporting the ordinance codified in this Chapter, the requirements of this Chapter are based on a number of factors including, but not limited to, the City's long-standing commitment to economic diversity; the serious need for affordable housing as reflected in local, state, and federal housing regulations and policies; the demand for affordable housing created by market rate development; the depletion of potential affordable housing sites by market-rate development; and the impact that the lack of affordable housing production has on the health, safety, and welfare of the City's residents including its impacts on traffic, transit and related air quality impacts, and the demands placed on the regional transportation infrastructure.

9.64.020 Definitions

The following words or phrases as used in this Chapter shall have the following meanings:

- A. **30% Income Household** means a household whose gross income does not exceed the 30% income limits applicable to the Los Angeles-Long Beach Primary Metropolitan Statistical Area, adjusted for household size, as published and periodically updated by HUD.
- B. **50% Income Household** means a household whose gross income does not exceed 50% of the area median income, adjusted for household size, as published and periodically updated by HUD. 50% income households include 30% income households.

- C. **80% Income Household** means a household whose gross income does not exceed 80% of the area median income, adjusted for household size, as published and periodically updated by HUD. 80% income households include 50% income households.
- D. **Adjusted for Household Size** means 70% adjustment for a household of one person, 80% adjustment for a household of two persons, 90% adjustment for a household of three persons, 100% adjustment for a household of four persons, 108% adjustment for a household of five persons, 116% adjustment for a household of six persons, 124% adjustment for a household of seven persons, 132% adjustment a household size of eight persons. For households of more than eight persons, adjustments shall be made in accordance with applicable HUD regulations.
- E. **Adjusted for Household Size Appropriate for the Unit** means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.
- F. **Affordable Housing Fee** means a fee paid to the City by a multi-family project applicant pursuant to Section 9.64.070 of this Chapter to assist the City in the production of housing affordable to 30% income households, 50% income households, 80% income households, and moderate-income households.
- G. **Affordable Housing Unit** means a housing unit developed by a multi-family project applicant pursuant to Section 9.64.050 or 9.64.060 of this Chapter which will be affordable to 30% income households, 50% income households, 80% income households, or moderate- income households.
- H. **Affordable Housing Unit Development Cost** means the City's average cost to develop a unit of housing affordable to 30% income households, 50% income households, 80% income households or moderate income households.
- I. **Affordable Ownership Housing Cost.** Affordable ownership housing cost means: For moderate income households whose gross incomes exceed the maximum income limits for 80% income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of the area median income adjusted for household size appropriate for the unit.
- J. **Affordable Rent.** Affordable rent means:
1. For 30% income households, the product of 30 percent times 30 percent of the area median income adjusted for household size appropriate for the unit.
 2. For 50% income households, the product of 30 percent times 50 percent of the area median income adjusted for household size appropriate for the unit.
 3. For 80% income households whose gross incomes exceed the maximum incomes for 50% income households, the product of 30 percent times 60 percent of the area median income adjusted for household size appropriate for the unit.
 4. For moderate income households, the product of 30 percent times 110 percent of the area median income adjusted for household size appropriate for the unit.

For purposes herein, affordable rent shall be adjusted as necessary to be consistent with pertinent Federal or State statutes and regulations governing Federal or State assisted housing.

- K. **Area Median Income or AMI.** Area median income or AMI means the median family income published from time to time by HUD for the Los Angeles-Long Beach Metropolitan Statistical Area.
- L. **Dwelling Unit.** One or more rooms, designed, occupied or intended for occupancy as separate living quarters, with full cooking, sleeping and bathroom facilities for the exclusive use of a single household. Dwelling unit shall also include single-room occupancy units as defined in Santa Monica Municipal Code Section 9.52.020 or any successor thereto.
- M. **Floor Area.** Floor area as defined in Santa Monica Municipal Code Section 9.52.020 or any successor thereto.
- N. **Gross Income.** Gross income has the same meaning as provided in title 25, section 6914 of the California Code of Regulations, as amended from time to time, in accordance with law.
- O. **HCD.** The California Department of Housing and Community Development or its successor.
- P. **Housing Cost.** Housing cost has the same meaning as provided in title 25, section 6920 of the California Code of Regulations, as amended from time to time in accordance with law.
- Q. **HUD.** The United States Department of Housing and Urban Development or its successor.
- R. **Income Eligibility.** Income eligibility is based upon the gross income of the household, including the income of all wage earners, elderly or disabled family members, and all other sources of household income.
- S. **Market Rate Unit.** A dwelling unit as to which the rental rate or sales price is not restricted by this Chapter.
- T. **Moderate Income Household** means a household whose gross income exceeds the maximum income for a 80% income household and whose gross income does not exceed the lesser of: (i) 120% of the area median income, adjusted for household size, as published and periodically updated by HCD or (ii) twice the income limit for 50% income households, adjusted for household size, as published and periodically updated by HUD.
- U. **Multi-family Project.** A multi-family residential development, including but not limited to apartments, condominiums, townhouses or the multi-family residential component of a mixed use project, for which City permits and approvals are sought.
- V. **Multi-family Project Applicant.** Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks City development permits or approvals to develop a multi-family project.
- W. **Multi-family Residential District.** Any district designated in the Santa Monica Zoning Ordinance as a multi-family residential district.
- X. **Parcel.** Parcel as defined in Santa Monica Municipal Code Section 9.52.020 or any successor thereto.
- Y. **Rent.** Rent has the same meaning as provided in title 25, section 6918 of the California Code of Regulations, as amended from time to time in accordance with law.
- Z. **Vacant Parcel.** A parcel in a multi-family residential district that has no residential structure located on it as of August 20, 1998 or which had a residential structure located on it on that date which was subsequently demolished pursuant to a demolition order of the City. No demolition of structures shall be permitted except in accordance with Santa Monica Municipal Code Section 9.25 et seq or any successor thereto.

9.64.030 Applicability of Chapter

- A. The obligations established by this Chapter shall apply to each multi-family project involving the construction of two or more multi-family units, which project has not received its ministerial or discretionary planning approvals including, without limitation: variances, conditional use permits, administrative approvals, development review permits, and development agreement ordinances which have not yet become effective (collectively, "Approvals") on or before July 26, 2013. No building permit shall be issued for any multi-family project unless such construction has been approved in accordance with the standards and procedures provided for by this Chapter. Notwithstanding the above, a multi-family rental housing project that will be developed by a nonprofit housing provider receiving financial assistance through one of the City's housing trust fund programs shall not be subject to the requirements of this Chapter so long as the project is an affordable housing project meeting the requirements of Santa Monica Municipal Code Section 9.52.020 or any successor thereto and the project's affordability obligations will be secured by a regulatory agreement, memorandum of agreement, or recorded covenant with the City for a minimum period of fifty-five years.
- B. Multi-family projects which have received Approvals prior to the effective date of this ordinance shall be subject to the provisions of Santa Monica Municipal Code Section 9.64.010 et seq., as they existed on the date of their approvals, except that pricing requirements for affordable housing units shall be published by the City on an annual basis instead of adoption by resolution of the City Council.
- C. A designated landmark building or contributing structure to an adopted Historic District that is retained and preserved on-site as part of a multi-family project shall not be considered or included in assessing any of the requirements under this Chapter.

9.64.040 Affordable Housing Obligation

- A. Except as provided in Section 9.23.030(A), all multi-family project applicants shall comply with the requirements of this Chapter in the following manner:
 - 1. Multi-family project applicants for multi-family ownership projects of four or more units in multi-family residential districts shall choose one of the two following options:
 - a. Providing affordable housing units on-site in accordance with Section 9.64.050;
 - b. Providing affordable housing units off-site in accordance with Section 9.64.060.
 - 2. In addition to the options established in subsections (1)(a) and (b), all other multi-family project applicants may also choose one of the following options:
 - a. Paying an affordable housing fee in accordance with Section 9.64.070;
 - b. Acquiring land for affordable housing in accordance with Section 9.64.080.
- B. A multi-family project application will not be determined complete until the applicant has submitted a written proposal which demonstrates the manner in which the requirements of this Chapter will be met.

9.64.050 On-Site Option

The following requirements must be met to satisfy the on-site provisions of this Chapter:

- A. For ownership projects of at least four units but not more than fifteen units in multi-family residential districts, the multi-family project applicant agrees to construct at least: (1) twenty percent of the total units as ownership units for moderate-income households, or as an alternative; (2) twenty percent of the total units as rental units for 80% income households if these rental units are provided by the applicant in accordance with Civil Code Sections 1954.52(b) and 1954.53(a)(2); (3) ten percent of the total units as rental units for 50% income households if these rental units are provided by the applicant in accordance with Civil Code Sections 1954.52(b) and 1954.53(a)(2); or (4) five percent of the total units as rental units for 30% income households if these rental units are provided by the applicant in accordance with Civil Code Sections 1954.52(b) and 1954.53(a)(2).
- B. For ownership projects of sixteen units or more in multi-family residential districts, the multi-family project applicant agrees to construct at least: (1) twenty-five percent of the total units as ownership units for moderate-income households, or as an alternative; (2) twenty-five percent of the total units as rental units for 80% income households if these rental units are provided by the applicant in accordance with Civil Code Sections 1954.52(b) and 1954.53(a)(2); fifteen percent of the total units as rental units for 50% income households if these rental units are provided by the applicant in accordance with Civil Code Sections 1954.52(b) and 1954.53(a)(2); or (4) ten percent of the total units as rental units for 30% income households if these rental units are provided by the applicant in accordance with Civil Code Sections 1954.52(b) and 1954.53(a)(2).
- C. For all other multi-family applicants, the multi-family project applicant agrees to construct at least:
 - 1. five percent of the total units of the project for 30% income households;
 - 2. ten percent of the total units of the project for 50% income households;
 - 3. twenty percent of the total units of the project for 80% income households; or
 - 4. one hundred percent of the total units of a project for moderate income households.
- D. Except as provided in Section 9.23.030(A), any fractional affordable housing unit that results from the formulas of this Section that is 0.75 or more shall be treated as a whole affordable housing unit (i.e., any resulting fraction shall be rounded up to the next larger integer) and that unit shall also be built pursuant to the provisions of this Section. Any fractional affordable housing unit that is less than 0.75 can be satisfied by the payment of an affordable housing fee for that fractional unit only pursuant to Section 9.64.070(A)(4) or by constructing all the mandatory on-site affordable units with three or more bedrooms. The City shall make available a list of income levels for 30% income households, 50% income households, 80% income households, and moderate income households, adjusted for household size, the corresponding maximum affordable rents adjusted by household size appropriate for the unit, and the minimum number of units required for 30% income households, 50% income households, or 80% income households required for typical sizes of multi-family projects, which list shall be updated periodically.
- E. The multi-family project applicant may reduce either the size or interior amenities of the affordable housing units as long as there are not significant identifiable differences between affordable housing units and market rate units visible from the exterior of the dwelling units; provided, that all dwelling units conform to the requirements of the applicable Building and Housing Codes. However, except as provided in Section 9.23.030(A), each affordable housing unit provided shall have at least two bedrooms unless:

1. The proposed project comprises at least ninety-five percent one bedroom units, excluding the manager’s unit, in which case the affordable housing units may be one bedroom;
2. The proposed project comprises at least ninety-five percent zero bedroom units, excluding the manager’s unit, in which case the affordable housing units may be zero bedroom units;
3. The proposed project comprises zero and one bedroom units, excluding the manager’s unit, in which case the affordable housing units must be at least one bedroom units; or
4. The multi-family project applicant has elected not to pay the affordable housing fee pursuant to Section 9.64.070(A)(4), in which case the affordable housing units must be at least three bedroom units. The design of the affordable housing units shall be reasonably consistent with the market rate units in the project. An affordable housing unit shall have a minimum total floor area, depending upon the number of bedrooms provided, no less than the following:

0 bedrooms	500 square feet	1 occupant
1 bedroom	600 square feet	1 occupant
2 bedrooms	850 square feet	2 occupants
3 bedrooms	1,080 square feet	3 occupants
4 bedrooms	1,200 square feet	5 occupants

Affordable housing units in multi-family projects of one hundred units or more must be evenly disbursed throughout the multi-family project to prevent undue concentrations of affordable housing units.

- F. All affordable housing units in a multi-family project or a phase of a multi-family project shall be constructed concurrently with the construction of market rate units in the multi-family project or phase of that project.
- G. On-site affordable housing units must be rental units in rental projects. In ownership projects, these affordable housing units may be either rental units or ownership units.
- H. Each multi-family project applicant, or his or her successor, shall submit an annual report to the City identifying which units are affordable units, the monthly rent (or total housing cost if an ownership unit), vacancy information for each affordable unit for the prior year, verification of income of the household occupying each affordable unit throughout the prior year, and such other information as may be required by City staff.
- I. A multi-family project applicant in a residential district who meets the requirements of this Section shall be entitled to the density bonuses and incentives provided by Sections 9.22.020 or any successor thereto and 9.22.030 or any successor thereto and the waiver/modification of development standards provided by Section 9.22.040 or any successor thereto. A multi-family project applicant in a commercial or industrial district shall be entitled to the development bonuses and incentives provided in the Land Use and Circulation Element and implementing ordinances.

- J. All residential developments providing affordable housing on-site pursuant to the provisions of this Section shall receive priority building department plan check processing by which housing developments shall have plan check review in advance of other pending developments to the extent authorized by law.
- K. The City Council may by resolution establish compliance monitoring fees which reflect the reasonable regulatory cost to the City of ensuring compliance with this Section when affordable housing units are being initially rented or sold, when the required annual reports are submitted to the City, and when the units are being re-sold or re-leased.

9.64.060 Off-Site Option

The following requirements must be met to satisfy the off-site option of this Chapter:

- A. The multi-family project applicant for ownership projects of four or more units in multi-family residential districts shall agree to construct twenty-five percent more affordable housing units than number of affordable housing units required by Section 9.64.050(A) and (B).
- B. For all other multi-family project applicants, the applicant shall agree to construct the same number of affordable housing units as specified in Section 9.64.050(C).
- C. The multi-family project applicant shall identify an alternate site suitable for residential housing which the project applicant either owns or has site control over (e.g., purchase agreement, option to purchase, lease) subject to City review to ensure that the proposed development is consistent with the City’s housing objectives and projects.
- D. The off-site units shall be located within a one-quarter mile radius of the market rate units.
- E. The off-site units shall satisfy the requirements of subsections (D) through (J) of Section 9.64.050.
- F. The off-site units shall not count towards the satisfaction of any affordable housing obligation that development of the alternative site with market rate units would otherwise be subject to pursuant to this Chapter.
- G. Exceptions to the location of the off-site units specified in this Section may be granted by the Planning Commission on a case-by-case basis upon a showing by the multi-family project applicant, based upon substantial evidence, that the location of off-site units in a location different from that specified in this Section better accomplishes the goals of this Chapter, including maximizing affordable housing production and dispersing affordable housing throughout the City.
- H. The City Council may by resolution establish compliance monitoring fees which reflect the reasonable regulatory cost to the City of ensuring compliance with this Section when affordable housing units are initially being rented or sold, when the required annual reports are submitted to the City, and when the units are being re-sold or re-leased.

9.64.070 Affordable Housing Fee

A multi-family project applicant eligible to meet the affordable housing obligations established by this Chapter by paying an affordable housing fee shall pay the fee in accordance with the following requirements:

- A. An affordable housing fee may be paid in accordance with the following formulas:
 1. Affordable housing unit base fee x floor area of multi-family project;
 2. Multi-family projects with fractional affordable housing units of less than 0.75 based on the formula established in Section 9.64.050:

(City's affordable housing unit development cost) x (fractional percentage)

- B. For purposes of this Section, the affordable housing unit base fee shall be established by resolution of the City Council. Commencing on July 1, 2006 and on July 1st of each fiscal year thereafter, the affordable housing unit base fee shall be adjusted based on changes in construction costs and land costs. The amount of the affordable housing fee that the multi-family project applicant must pay shall be based on the affordable housing unit base fee resolution in effect at the time that the affordable housing fee is paid to the City.
- C. For purposes of this Section, the City's affordable housing unit development cost shall be established by resolution of the City Council. Commencing on July 1, 2007 and on July 1st of each fiscal year thereafter, the City's affordable housing unit development cost shall be adjusted based on changes in construction costs and land costs. The affordable housing fee that the multi-family project applicant must pay shall be based on the affordable housing unit development cost resolution in effect at the time of payment to the City.
- D. The amount of the affordable housing unit base fee may vary by product type (apartment or condominium) and shall reflect, among other factors, the relationship between new market rate multi-family development and the need for affordable housing.
- E. The affordable housing fee shall be paid in full to the City prior to the City granting any approval for the occupancy of the project, but no earlier than the time of building permit issuance.
- F. The City shall deposit any payment made pursuant to this Section in a reserve account separate from the General Fund to be used only for development of affordable housing, administrative costs related to the production of this housing, and monitoring and evaluation of this affordable housing production program. Any monies collected and interest accrued pursuant to this Chapter shall be committed within five years after the payment of such fees or the approval of the multi-family project, whichever occurs later. Funds that have not been appropriated within this five-year period shall be refunded on a pro rata share to those multi-family project applicants who have paid fees during the period. Expenditures and commitments of funds shall be reported to the City Council annually as part of the City budget process.
- G. An affordable housing fee payment pursuant to this Section shall not be considered provision of affordable housing units for purposes of determining whether the multi-family project qualifies for a density bonus pursuant to Government Code Section 65915.

9.64.080 Land Acquisition

- A. A multi-family project applicant may meet the affordable housing obligations established by this Chapter by making an irrevocable offer:
 - 1. Dedicating land to the City or a non-profit housing provider;
 - 2. Selling of land to the City or a non-profit housing provider at below market value; or
 - 3. Optioning of land on behalf of the City or a non-profit housing provider.

Each of these options must be for a value at least equivalent to the affordable housing obligation otherwise required pursuant to this Section.

- B. The multi-family project applicant must identify the land at the time that the development application is filed with the City. Any land offered pursuant to this Section must be located within one-quarter mile radius of the market rate units unless the multi-family project applicant demonstrates that locating the land outside of this radius better accomplishes the goals of this Chapter, including maximizing affordable housing production and dispersing affordable housing throughout the City. The City may approve, conditionally approve or reject such offers subject to administrative guidelines to be prepared by the City Manager or designee. If the City rejects such offer, the multi-family project applicant shall be required to meet the affordable housing obligation by other means set forth in this Chapter.

9.64.090 Fee Waivers

The Condominium and Cooperative Tax described in Section 6.76.010 of the Santa Monica Municipal Code or any successor thereto and the Park and Recreation Facilities Tax established in Chapter 6.80 of Article 6 of the Santa Monica Municipal Code or any successor thereto, the Transportation Impact Fee required by Chapter 9.66, or any successor thereto, the Open Space Fee required by Chapter 9.67, or any successor thereto, and the Childcare Linkage Fee required by Chapter 9.65, or any successor thereto, shall be waived for required affordable housing units and for 30%, 50%, 80% and moderate-income dwelling units developed by the City or its designee using affordable housing fee. However, any multi-family project applicant who elects to pay an affordable housing fee shall not be eligible for any fee waiver under this Section.

9.64.100 Pricing Requirements for Affordable Housing Units

The City shall publish, on an annual basis, the 30%, 50%, 80%, and moderate income household levels, and affordable rents for affordable housing units, adjusted for household size appropriate for the unit.

9.64.110 Eligibility Requirements

- A. Only 30%, 50%, 80% and moderate-income households shall be eligible to occupy or own and occupy affordable housing units. The City shall develop a list of income-qualified households. Multi-family project applicants shall be required to select households from the City-developed list of income-qualified households, except applicants of ownership projects of four or more units in the City's multi-family residential zones may themselves select income-qualified households which shall be subject to eligibility certification by the City.
- B. The following individuals, by virtue of their position or relationship, are ineligible to occupy an affordable housing unit:
1. All employees and officials of the City of Santa Monica or its agencies, authorities, or commissions who have, by the authority of their position, policy-making authority or influence over the implementation of this Chapter and the immediate relatives and employees of such City employees and officials;
 2. The immediate relatives of the applicant or owner, including spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister-in-law, and brother-in-law.

9.64.120 Relation to Units Required by Rent Control Board

30%, 50%, 80% and moderate-income dwelling units developed as part of a market rate project, pursuant to replacement requirements of the Santa Monica Rent Control Board, shall count towards the satisfaction of this Chapter if they otherwise meet applicable requirements for this Chapter including, but not limited to, the income eligibility requirements, deed restriction requirements, and

pricing requirements. New inclusionary units required by the Rent Control Board which meet the standards of this Chapter shall count towards the satisfaction of this Chapter.

9.64.130 Deed Restrictions

Prior to issuance of a building permit for a project meeting the requirements of this Chapter by providing affordable units on-site or off-site, the multi-family project applicant shall submit deed restrictions or other legal instruments setting forth the obligation of the applicant under this Chapter for City review and approval. Such restrictions shall be effective for at least fifty-five years. In addition to the administrative guidelines specifically required by other provisions of this Chapter, the City Manager or designee shall be the designated authority to enter into recorded agreements with multi-family project applicants.

9.64.140 Enforcement

No building permit or occupancy permit shall be issued, nor any development approval granted, for a project which is not exempt and does not meet the requirement of this Chapter. All affordable housing units shall be rented or owned in accordance with this Chapter.

9.64.150 Annual Report

The City Manager or designee, shall submit a report to the City Council on an annual basis which shall contain information concerning the implementation of this Chapter. This report shall also detail the projects that have received planning approval during the previous year and the manner in which the provisions of this Chapter were satisfied. This report shall further assess whether the provisions of Proposition R have been met and whether changes to this Chapter or its implementation procedures are warranted. In the event the provisions of Proposition R have not been met, the City Council shall take such action as is necessary to ensure that the provisions will be met in the future. This action may include, but not be limited to, amending the provisions of this Chapter or its implementation.

9.64.160 Principles and Guidelines

The City Manager or designee, shall develop guidelines to implement this chapter, which guidelines shall be subject to approval of the City Council. The guidelines shall include, but not be limited to, the methodology for the establishment and periodic adjustment of the base fee and the affordable housing unit development cost; for-sale affordable unit requirements, tenant and purchaser eligibility procedures; and additional requirements for exercise of the off-site option and land acquisition option.

9.64.170 Adjustments or Waivers

- A. A multi-family project applicant may request that the requirements of this Chapter be adjusted or waived based on a showing that applying the requirements of this Chapter would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.
- B. To receive an adjustment or waiver, the applicant must submit an application to the City Manager or designee, at the time the applicant files a multi-family project application. The applicant shall bear the burden of presenting substantial evidence to support the request and set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

- C. In making a determination on an application to adjust or waive the requirements of this Chapter, the City Manager or designee, or City Council on appeal, may assume each of the following when applicable:
1. The applicant is subject to the affordable housing requirement of this Chapter;
 2. The applicant will benefit from the inclusionary incentives set forth in this Chapter and the City's Municipal Code;
 3. The applicant will be obligated to provide the most economical affordable housing units feasible in terms of construction, design, location and tenure.
- D. The City Manager or designee shall render a written decision within ninety days after a complete application is filed. The City Manager's or designee's decision may be appealed to the City Council if such appeal is filed within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Chapter 9.37 Common Procedures of this Code or any successor thereto.
- E. If the City Manager or designee, or City Council on appeal, upon legal advice provided by or at the behest of the City Attorney, determines that applying the requirements of this Chapter would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property, the affordable housing requirements shall be adjusted or waived to reduce the obligations under this Chapter to the extent necessary to avoid an unconstitutional result. If an adjustment or waiver is granted, any change in the use within the project shall invalidate the adjustment or waiver. If the City Manager or designee, or City Council on appeal, determines that no violation of the United States or California Constitutions would occur through application of this Chapter, the requirements of this Chapter remain fully applicable.

Chapter 9.65 Child Care Linkage Program

Sections:

9.65.010	Findings and Purpose
9.65.020	Applicability of Chapter
9.65.030	Definitions
9.65.040	Child Care Requirement
9.65.050	Fee Adjustments or Waivers
9.65.060	Fee Revenue Account
9.65.070	Use of Funds
9.65.080	Automatic Annual Adjustment
9.65.090	Annual Report
9.65.100	Refunds
9.65.110	Fee Revision by Resolution
9.65.120	Regulations

9.65.010 Findings and Purpose

- A. The purpose of this Chapter is to assure that developers of new residential and workplace development mitigate the increased demand for child care attributable to and generated by such development projects by contributing to the creation of an equitable share of child care facility spaces, and thereby help the City meet its child care facility needs.
- B. There is a shortage of licensed child care facilities within the City to meet local needs for child care services. The causal connection between new commercial and residential development and the demand for child care facilities, as well as an estimate of the cost of providing facilities to meet that demand has been studied and presented to the City Council by City staff. The information presented demonstrates that certain new development projects create an influx of new employees and families to the City, and thus generate additional need for child care facilities, creating additional and cumulative impacts on the system for providing child care. A lack of adequate child care facilities in the City will have an adverse effect on the residents' quality of life and the City's economy, as employers will be unable to secure employees who cannot find accessible child care facilities. The increased demand for child care services generated by new development projects, unless mitigated, is detrimental to the City's public health, safety and general welfare.
- C. The public policy of the City, as reflected by the City's Child Care Master Plan and Land Use Element, is to encourage child-care facilities, the provision of which requires a partnership between public and private participants. The fees and exactions established by this Chapter upon receipt shall be used to create new child care facility spaces in the City by public and private child care providers to offset the demand generated by new development projects. The City Council finds that there is a reasonable relationship between the purpose for which the fees established by this Chapter are to be used and the type of development projects on which the fees are imposed, and between the amount of the fees and the cost of the child care facility or portion of the facility attributable to the development on which the fees are imposed.

9.65.020 Applicability of Chapter

The regulations, requirements and provisions of this Chapter and council resolutions adopted pursuant hereto shall apply to developers of residential, office, retail and hotel development projects as defined in this Chapter.

9.65.030 Definitions

The following words or phrases shall have the following meanings when used in this Chapter:

- A. **Child Care Facility.** A child day care facility as defined in California Health and Safety Code Section 1596.76
- B. **Child Care Linkage Fee.** A fee paid to the City by an applicant pursuant to Section 9.65.040 of this Chapter in connection with approval of a project, to contribute to the creation of child care spaces to meet the increased facility needs created by increases in population and employment in the City.
- C. **Child Care Provider.** An organization which operates a child day-care facility as defined in California Health and Safety Code Section 1596.791.
- D. **Director.** The Director of Community and Cultural Services Department, or his/her designee, or the Director of Planning and Community Development, or his/her designee, as appropriate.
- E. **Hotel.** Hotel as defined at Santa Monica Municipal Code Section 9.51 and Motel as defined at Santa Monica Municipal Code Section 9.51, or any successor legislation.
- F. **Impact Formula.** A formula, adopted by Council ordinance or resolution, to determine the amount of fee due for each project based on the increased demand for child care that results from the project and the per unit cost of meeting that demand.
- G. **Office.** A structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location services including, but not limited to the following: professional, banking, insurance, management, consulting, technical, sales and design, entertainment or post-production studios, or the office functions of manufacturing or warehousing businesses. This definition shall include, but not be limited to, all uses encompassed within the meaning of Section 9.51, or any successor legislation.
- H. **Project.** Office, retail, hotel development having a gross new or additional floor area of seven thousand five hundred square feet or more or that changes an existing use to a different use that increases the demand for child care spaces, or residential development of improved or unimproved land which conforms to development approvals and requirements of this Code, regardless of the nature of the project, e.g., developing undeveloped land, expanding a use. Gross floor area for the purposes of this definition shall be the same as Section 9.52, or any successor legislation, but shall also exclude parking area. Where the requirements of this Chapter have been adjusted or waived for a project pursuant to Section 9.65.050 hereof, subsequent changes in use, project remodels or tenant improvements that increase the demand for child care facility spaces shall constitute a project as defined herein.
- I. **Residential Development.** Development of a multi-family dwelling units for a household as those terms are defined in Sections 9.51 and 9.52, or any successor legislation, respectively, including but not limited to multi-family residences of more than one unit, apartments, condominiums, townhouses or the multi-family residential component of a mixed use project, for which City permits and approvals are sought. Residential development, for purposes of defining a project subject to this chapter, does not include the following: day care centers; churches, temples, synagogues, and other buildings or structures used for religious worship; repair and reconstruction of any building damaged

by flood, fire or other disaster; governmental facilities; affordable housing units; community care facilities; senior citizen housing development.

- J. **Retail.** A business which is engaged in selling goods or merchandise to the general public and which may provide services incidental to the sale of such goods as defined in Section 9.51, or any successor legislation.

9.65.040 Child Care Requirement

For any project defined herein, the developer shall pay a child care linkage fee or participate in the construction or establishment of child care facilities in accordance with the following:

- A. **Child Care Linkage Fee.** Fees shall be computed as follows:
1. For residential development projects that result in the addition of a dwelling unit: one hundred eleven dollars per dwelling unit.
 2. All office, retail and hotel projects shall pay the following based on the gross square footage of the proposed project:
 - a. Office: \$5.27 per square foot.
 - b. Retail: \$3.77 per square foot.
 - c. Hotel: \$2.64 per square foot.
 3. For mixed residential/nonresidential development, the sum of the fee required for each component as set forth above in subdivisions (1) and (2) of this subsection.
- B. **Timing of Fee Payment.**
1. Fees shall be imposed at the time of approval of any discretionary permit for a development project subject to this Chapter or, if the fees cannot be lawfully imposed as a condition of discretionary project approval, at the time of any other subsequent permit required for the development to proceed, including but not limited to building permits. The project applicant shall pay fees according to the schedule of fees in place on the date the fees are paid, except that the applicant for a vesting tentative map for a development project shall pay the fees in effect on the date the application for the vesting tentative map is deemed complete.
 2. No building permit for any development project shall be issued unless a contract to pay the fees has been executed with the Planning and Community Development Department, and no final inspection shall be approved unless fees have been paid. For development projects subject to this Chapter, child care linkage fees shall be paid on the date final inspection approval is received and prior to certificate of occupancy. If a residential development project contains more than one dwelling unit and is approved for development in phases, the developer shall pay the fees in installments based on the phasing of the residential development project. Each fee installment shall be paid at the time when the first dwelling unit within each phase of development has received its final inspection.
 3. For all projects subject to this Chapter, the City may require the payment of fees at an earlier time if the fees will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the City has adopted a proposed

construction schedule or plan prior to final inspection, or the fees are to reimburse the City for expenditures previously made.

C. **Facilities In Lieu of Fees.** The developer of a residential or nonresidential project may satisfy the requirement for the payment of fees by agreeing to participate in the construction or establishment of one or more child care facilities. Such participation shall be secured generally as follows:

1. **Type and Cost of Participation.** A developer seeking to satisfy the child care requirements of this Chapter through participation in the construction or establishment of new child care facilities shall submit documentation acceptable to the Director of Planning and Community Development to support the request for participation in lieu of fees. The documentation shall establish that the type and cost of participation including, but not limited to, construction, rehabilitation of existing structures conforming to license and zoning requirements, or land or premises dedication, bears a reasonable relationship to the fee otherwise required in subsection (A). Construction Cost Indexes, prevailing wage rates, and the best available index of costs of equipment and supplies shall be utilized to determine the level of participation relative to the required fee. In the case of land or premises dedication, the market value of land or premises dedicated shall be reasonably related to the fee otherwise required in subsection (A). If the actual construction cost or market value is greater than the required relevant fees, the City shall have no obligation to pay the excess amount.
2. **Approval of Participation.** The Director of Planning and Community Development, after consultation with the Director of the Community and Cultural Services Department, shall determine and approve the type and cost of participation in the construction or establishment of facilities.
3. **Verification of Participation.** The Director of Planning and Community Development shall require that the developer submit a written verification of participation in meeting these requirements. Said verification shall consist of documentation sufficient to enable the Director to readily determine compliance with the provisions of this Chapter. Upon receipt of documentation sufficient to demonstrate compliance, the Director shall issue a notice that the developer has complied with the requirements of this Chapter.
4. The Director's determination of the type and cost of participation in the construction or establishment of child care facilities pursuant to this Section may be appealed to the City Council if such appeal is filed within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Section 9.37.130.

9.65.050 Fee Adjustments or Waivers

- A. A developer of any project subject to the fee described in Section 9.65.040(A) may request that the requirements of this Chapter be adjusted or waived based upon the absence of a reasonable relationship or nexus between the impacts of that development and either the amount of the fee charged or the type and cost of the facilities to be established or constructed in lieu of fee through participation. The grounds for such request may include, but are not limited to, circumstances where the particular design and use of the workspace building area prevent the proposed project from generating the demand for child care facility spaces in the amount of the child care linkage fee required by this Chapter.
- B. To receive an adjustment or waiver, the developer must submit an application to the Director of Planning and Community Development, or his/her designee, at the time the developer files a project application. The developer shall bear the burden of presenting substantial evidence to support the

request and set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

- C. The Director of Planning and Community Development shall render a written decision within ninety days after a complete application is filed. The Director's decision may be appealed to the City Council if such appeal is filed within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Section 9.37.130. The decision of the City Council shall be final. If an adjustment or waiver is granted, any change in use from the approved project shall invalidate the adjustment or waiver.

9.65.060 Fee Revenue Account

Pursuant to Government Code Section 66006, the Child Care Linkage Fee Reserve Account is hereby established. The fees paid pursuant to the provisions of this Chapter shall be placed into the Child Care Linkage Fee Reserve Account and used solely for the purpose described in this Chapter. All monies in this reserve account shall be held separate and apart from other city funds. All interest or other earnings of such reserve account shall be credited to that account.

9.65.070 Use of Funds

Funds in the Child Care Linkage Fee Reserve Account shall be expended on the construction and establishment of child care facilities within the corporate limits of the City of Santa Monica, exclusive of ongoing operating expenses and general maintenance. Such expenditures may include, but shall not be limited to, the following:

- A. The reimbursement for all direct and indirect costs incurred by the City for the development of child care facilities pursuant to this Chapter, including but not limited to, the costs of land acquisition, planning, legal advice, engineering, design, construction and equipment.
- B. The reimbursement for all costs incurred by the City associated with the administration of the reserve account, including but not limited to, audits, and yearly accounting and reports.
- C. The making of loans at conventional, low, or no interest, loan guarantees, or grants to child care providers for child care facility capital improvements, including but not limited to, land acquisition, planning, design, and construction (including rehabilitation) which result in the provision of additional child care facilities.

9.65.080 Automatic Annual Adjustment

Each fee imposed by this Chapter shall be adjusted automatically on July 1st of each fiscal year, beginning on July 1, 2007, by a percentage equal to the appropriate Engineering Construction Cost Index as published by Engineering News Record, or its successor publication, for the preceding twelve months.

9.65.090 Annual Report

Except for the first year that this Chapter is in effect, within one hundred eighty days after the last day of each fiscal year, the Director of the Community and Cultural Services Department shall make available to the public and submit for review by the City Council the information required by Government Code Section 66006(b)(1) pursuant to the procedures set forth in Section 66006(b)(2).

9.65.100 Refunds

- A. If a development permit upon which a child care linkage fee was collected expires, is vacated or voided, without commencement of construction, upon request of the developer, the developer shall be entitled to a refund of the unexpended child care linkage fee paid, less a portion of the fees sufficient to cover costs of collection, accounting for and administration of the fees paid. The fee payer shall submit a written request for a refund to the Director of Planning and Community Development within one year of the expiration date of the permit. Failure to timely submit a request for refund may constitute a waiver of any right to a refund.
- B. Fees collected pursuant to this Chapter which remain unexpended or uncommitted for five or more fiscal years after deposit into the reserve account may be refunded as provided by Government Code Section 66001(e) and (f).

9.65.110 Fee Revision by Resolution

The amount of the child care linkage fees and the formula for the automatic annual adjustment established by this Chapter may be reviewed and revised periodically by resolution of the City Council utilizing the best available information. This Chapter shall be considered enabling and directive in this regard.

9.65.120 Regulations

The City Manager, or her/his designee, is authorized to adopt administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth within this Chapter, which is hereby codified in Article 9, Chapter 9.65 of the Santa Monica Municipal Code or as otherwise designated by the City Clerk. All such administrative regulations or guidelines must be in writing.

Chapter 9.66 Transportation Impact Fee Program

Sections:

9.66.010	Findings and Purpose
9.66.020	Applicability of Chapter
9.66.030	Definitions
9.66.040	Transportation Mitigation Requirement
9.66.050	Fee Adjustments and Waivers
9.66.060	Fee Revenue Account
9.66.070	Distribution of Transportation Impact Fee Funds
9.66.080	Periodic Review and Adjustment of Transportation Impact Fees
9.66.090	Fee Refunds
9.66.100	Fee Revision by Resolution
9.66.110	Regulations

9.66.010 Findings and Purpose

- A. The purpose of this Chapter is to implement the goals, objectives and policies of the City of Santa Monica's Land Use and Circulation Element ("LUCE") and, particularly, the City's goal of no net new automobile p.m. peak hour trips occurring when new development is constructed within the City limits. Imposing a fee that is reasonably related to the burdens created by new development on the City's surface transportation system will enable the City to construct the required capital improvements that will contribute to fulfilling this goal.
- B. The City has prepared a Transportation Impact Fee Nexus Study. It shows, and the City Council finds, that there is a reasonable relationship between the purpose for which the fees established by this Chapter are to be used and the type of development projects on which the fees are imposed, and between the amount of the fees and the cost of the transportation facilities or portion of the facilities attributable to the development on which the fees are imposed.
- C. It is the intent of the City Council that the fee required by this Chapter shall be supplementary to any conditions imposed upon a development project pursuant to other provisions of the Municipal Code, the City Charter, the Subdivision Map Act, the California Environmental Quality Act, other State and local laws, which may authorize the imposition of project specific conditions on development.

9.66.020 Applicability of Chapter

- A. The regulations, requirements and provisions of this Chapter and Council resolutions adopted pursuant hereto shall apply to all new projects for which a development application was deemed complete or an application for changes in existing uses was made on or after the effective date of the ordinance codified in this Chapter.
- B. Notwithstanding subsection (A), the following projects, square footage and affordable residential units shall not be subject to the requirements of this Chapter:

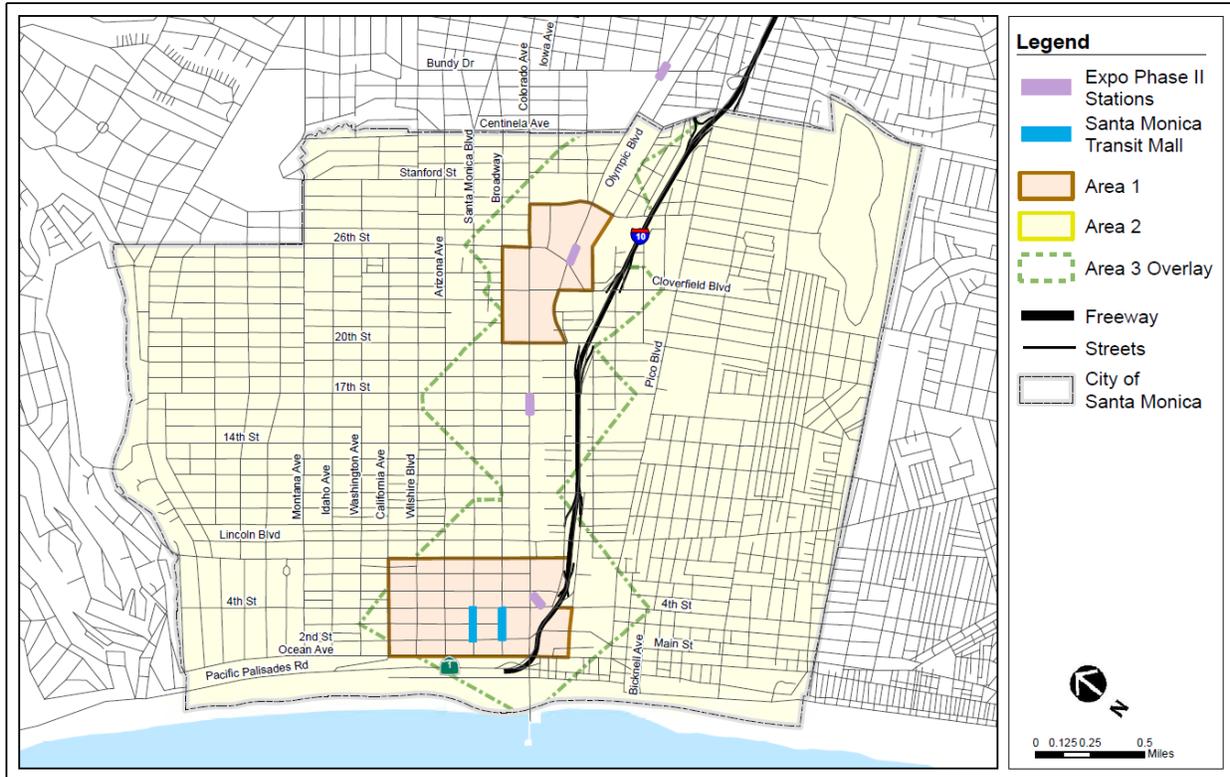
1. Places of worship;
2. City projects;
3. Day care centers;
4. Private K-12 schools;
5. Multi-family rental housing projects developed by a nonprofit housing provider if the developer is receiving financial assistance through a public agency, so long as the multi-family rental housing project is an affordable housing project meeting the definition of affordable housing in Santa Monica Municipal Code Section 9.52.020 and the project's affordable housing obligations will be secured by a regulatory agreement, memorandum of agreement, or recorded covenant with a public agency for a minimum period of fifty-five years;
6. Re-occupancy of square footage in an existing building or structure if there is no change of use;
7. Square footage used for outdoor dining in the public right-of-way; and
8. Affordable housing units deed restricted to very-low income and low income households.

9.66.030 Definitions

For the purpose of this Chapter, the following terms shall be defined as follows:

- A. "Area 1" means the area bounded in the west by California Avenue from 7th Street to Ocean Avenue, in the north by 7th Street from California Avenue to Highway 10 and 4th Street from Highway 10 to Olympic Drive, in the east by Highway 10 from 7th Street to 4th Street and Olympic Drive from 4th Street to Ocean Avenue, and in the south by Ocean Avenue from California Avenue to Olympic Drive and, the area bounded in the west by Broadway from 20th Street to 26th Street and Colorado Avenue from 26th Street to Stewart Street, in the north by 26th Street from Broadway to Colorado Avenue and by Stewart Street from Colorado Avenue to Exposition Boulevard, in the east by Exposition Boulevard and Michigan Avenue from Stewart Street to Cloverfield Boulevard and Olympic Boulevard from Cloverfield Boulevard to 20th Street, and in the south by 20th Street from Broadway to Olympic Boulevard and Cloverfield Boulevard from Olympic Boulevard to Michigan Avenue.
- B. "Area 2" means any remaining area within the City boundary that is not included in Area 1.
- C. "Area 3 overlay" means a one-half mile walk-shed from a transit station within the City boundary. Only housing development projects as defined in Section 9.66.040(A)(6) may qualify for a transportation impact fee based on their location within the Area 3 overlay.

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- D. “City projects” means City public works projects and City community facilities (e.g., libraries, public parking structures, recycling centers, and community centers), not including public/private partnerships.
- E. “Housing development project” means a development project with common ownership and financing consisting of residential use or mixed use where not less than fifty percent of the floorspace is for residential use as provided in Government Code Section 66005.1(c) and its successor statutes.
- F. “Nexus Study” means the Transportation Impact Fee Nexus Study prepared by Nelson/Nygaard Consulting Associates Inc, dated April 2012.
- G. “Project” means any development having a gross new or additional floor area of one thousand square feet or more or that changes an existing use to a different use that increases the demand for transportation infrastructure, or residential development of improved or unimproved land which adds dwelling units. Gross floor area for the purposes of this definition shall be the same as Section 9.52, or any successor legislation, but shall exclude parking area. Where the requirements of this Chapter have been adjusted or waived for a project pursuant to Section 9.66.050 hereof, subsequent changes in use, project remodels or tenant improvements that increase trip generation shall constitute a project as defined herein.
- H. “Transit station” means a rail or light-rail station, ferry terminal, bus hub, or bus transfer station, and includes planned transit stations otherwise meeting this definition whose construction is

programmed to be completed prior to the scheduled completion and occupancy of the housing development.

- I. “Transportation impact fee” means a fee paid to the City by an applicant pursuant to Section 9.66.040 of this Chapter in connection with approval of a project, to contribute to the creation of transportation improvements to offset additional vehicle trips generated by new development to achieve no net new trips consistent with the goals, objectives and policies of the City’s Land Use and Circulation Element (“LUCE”).

9.66.040 Transportation Mitigation Requirement

Except as provided in Section 9.66.050, the developer of a project shall pay a transportation impact fee in accordance with the following:

- A. **Transportation Impact Fee.** Fees shall be computed as follows:
 1. For single-family residential development projects that result in the addition of a dwelling unit:
 - a. Seven thousand six hundred dollars per multi-family dwelling unit in Area 1.
 - b. Seven thousand eight hundred dollars per multi-family dwelling unit in Area 2.
 2. For multi-family residential development projects that result in the addition of a dwelling unit:
 - a. Two thousand six hundred dollars per multi-family dwelling unit in Area 1.
 - b. Three thousand three hundred dollars per multi-family dwelling unit in Area 2.
 - c. Two thousand six hundred dollars per multi-family dwelling unit in Area 3 overlay for housing development projects that satisfy the requirements of subsection (A)(6)(a), (b), and (c) of this Section.
 3. All nonresidential projects shall pay the following based on the gross square footage of the proposed project:
 - a. Retail.
 - i. Twenty-one dollars per square foot in Area 1.
 - ii. Thirty dollars and ten cents per square foot in Area 2.
 - b. Office.
 - i. Nine dollars and seventy cents per square foot in Area 1.
 - ii. Ten dollars and eighty cents per square foot in Area 2.
 - c. Medical Office.
 - i. Twenty-eight dollars and ten cents per square foot in Area 1.
 - ii. Twenty-nine dollars and eighty cents per square foot in Area 2.
 - d. Hospital.
 - i. Not applicable.
 - ii. Fourteen dollars and seventy cents per square foot in Area 2.
 - e. Lodging.

- i. Three dollars and sixty cents per square foot in Area 1.
 - ii. Three dollars and sixty cents per square foot in Area 2.
 - f. Industrial.
 - i. One dollar and twenty cents per square foot in Area 1.
 - ii. One dollar and thirty cents per square foot in Area 2.
 - g. Auto Sales and Display Areas.
 - i. One dollar and twenty cents per square foot in Area 1.
 - ii. One dollar and thirty cents per square foot in Area 2.
- 4. The land use categories identified in subsections (3)(a) through (g) shall have the following meanings:
 - a. Single-family residential shall include single-family.
 - b. Multi-family residential shall include congregate care—nonsenior, congregate care—seniors, and multi-family.
 - c. Retail shall include: animal kennels and veterinary hospitals, auto repair, car wash, community meeting facilities, community centers and nonresidential adult care facilities, retail and wholesale construction-related materials, nurseries and garden centers, entertainment and recreational facilities, gas station, library, museums, aquariums and art galleries, nightclubs and bars, personal services, post-secondary educational facility, pre-school/child day care, private studio, restaurants—fast food and cafés, restaurants—sit down, retail durable goods, retail food and markets, retail mixed, and retail non-food.
 - d. Office shall include: creative office, financial institutions and office, and general office.
 - e. Medical office shall include: medical office, including medical clinics, and offices for medical professionals.
 - f. Hospital shall include: full service hospitals.
 - g. Lodging shall include: hotels, motels and other overnight accommodations.
 - h. Industrial shall include: surface or structured auto inventory storage, City maintenance facilities and bus yards, heavy industrial and manufacturing, light industrial, utilities, warehouse and self-storage, and wholesale distribution and shipping.
- 5. For mixed residential/nonresidential development, the sum of the fee required for each component as set forth in subsections (A)(2) and (A)(3) of this Section.
- 6. Housing development projects within the Area 3 overlay that meet the following characteristics shall pay a transportation impact fee of two thousand six hundred dollars per multi-family dwelling unit:

- a. The housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length; and
 - b. Convenience retail uses, including a store that sells food, are located within one-half mile of the housing development; and
 - c. The housing development provides either the minimum number of parking spaces required by the municipal code, or no more than one on-site parking space for zero- to two-bedroom units, and two on-site parking spaces for three or more bedroom units, whichever is less.
7. The amount of legally permitted square footage to be demolished in an existing building or structure, or to be removed from an outdoor area used as part of a service station or for auto dealer sales, display and inventory storage, as a part of a project shall be a credit in the calculation of the transportation impact fee. Outdoor area used as part of a gas station shall not include setbacks, landscaping, parking and other paved areas used solely for access and circulation.

B. Timing of Fee Payment.

1. The project applicant shall pay fees according to the schedule of fees in place on the date the fees are paid, except that the applicant for a vesting tentative map for a development project shall pay the fees in effect on the date the application for the vesting tentative map is deemed complete, as automatically adjusted.
2. No building permit for any project shall be issued unless the fees have been paid or, if state law requires the City to accept later fee payment, a contract to pay the fees has been executed with the City, in which case no final inspection shall be approved until the fees have been paid. If a residential development project contains more than one dwelling unit and is approved for development in phases, the developer shall pay the fees in installments based on the phasing of the residential development project. Each fee installment shall be paid at the time when the first dwelling unit within each phase of development has received its final inspection.
3. For all projects subject to this Chapter, the City may require the payment of fees at an earlier time if the fees will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the City has a proposed construction schedule or plan prior to final inspection, or the fees are to reimburse the City for expenditures previously made.

9.66.050 Fee Adjustments and Waivers

- A. A developer of any project subject to the fee described in Section 9.66.040(A) may request that the requirements of this Chapter be adjusted or waived for the conversion of nonconforming ground floor uses in commercial zones to conforming pedestrian-oriented uses.
- B. To receive an adjustment or waiver, the developer must submit an application to the Director or Planning and Community Development, or designee, at the time the developer files a discretionary project application or, if no discretionary application is required, a building permit application. The developer shall bear the burden of presenting a preponderance of the evidence to support the request and set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

- C. The Director of Planning and Community Development or designee shall render a written decision within ninety days after a complete application is filed. The Director's decision may be appealed to the Planning Commission by the project applicant if such appeal is filed within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Chapter 9.37 Common Procedures of this Code. The decision of the Planning Commission shall be final.
- D. If an adjustment or waiver is granted, any change in use from the approved project shall invalidate the adjustment or waiver.

9.66.060 Fee Revenue Account

Pursuant to Government Code Section 66006, the transportation impact fee reserve account is hereby established. The fees paid to the City pursuant to the provisions of this Chapter shall be deposited into the transportation impact fee reserve account and used solely for the purpose described in this Chapter. All monies deposited into the reserve account shall be held separate and apart from other City funds. All interest or other earnings on the unexpended balance in the reserve account shall be credited to the reserve account.

9.66.070 Distribution of Transportation Impact Fee Funds

All monies and interest earnings in the transportation impact fee reserve account shall be expended on the construction and related design and administration costs of constructing transportation improvements identified in the Nexus Study, or such other report as may be prepared from time to time to document the reasonable fair share of the costs to mitigate the transportation impacts of new development. Such expenditures may include, but are not necessarily limited to the following:

- A. Reimbursement for all direct and indirect costs incurred by the City to construct transportation improvements pursuant to this Chapter, including, but not limited to, the cost of land and right-of-way acquisition, planning, legal advice, engineering, design, construction, construction management, materials and equipment.
- B. Costs of issuance or debt service associated with bonds, notes or other security instruments issued to fund transportation improvements identified.
- C. Reimbursement for administrative costs incurred by the City in establishing or maintaining the transportation impact fee reserve account required by this Chapter, including, but not limited to, the cost of studies to establish the requisite nexus between the fee amount and the use of fee proceeds and yearly accounting and reports.

9.66.080 Periodic Review and Adjustment of Transportation Impact Fees

To account for inflation in transportation infrastructure construction costs, the fee imposed by this Chapter shall be adjusted automatically on July 1st of each fiscal year, beginning on July 1, 2013, by a percentage equal to the appropriate Construction Cost Index as published by Engineering News Record, or its successor publication, for the preceding twelve months.

9.66.090 Fee Refunds

- A. If a transportation impact fee is collected on a project and the permit for that project later expires, is vacated or voided before commencement of construction, the developer shall, upon request, be entitled to a refund of the unexpended transportation impact fee paid, less a portion of the fee sufficient to cover costs of collection, accounting for and administration of the fee paid. Any request for a refund shall be submitted in writing to the Director of Planning and Community Development within one year of the date that the permit expires or is vacated or voided. Failure to timely submit a request for refund shall constitute a waiver of any right to a refund.
- B. Fees collected pursuant to this Chapter which remain unexpended or uncommitted for five or more fiscal years after deposit into the transportation impact fee reserve account may be refunded as provided by State law.

9.66.100 Fee Revision by Resolution

The amount of the transportation impact fees and the formula for the automatic annual adjustment established by this Chapter may be reviewed and revised periodically by resolution of the City Council. This Chapter shall be considered enabling and directive in this regard.

9.66.110 Regulations

The Director of Planning and Community Development, or designee, is authorized to adopt written administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth within this Chapter.

Chapter 9.67 Parks and Recreation Development Impact Fee Program

Sections:

9.67.010	Findings and Purpose
9.67.020	Applicability of Chapter
9.67.030	Definitions
9.67.040	Parks and Recreation Mitigation Requirement
9.67.050	Fee Adjustments and Waivers
9.67.060	Fee Revenue Account
9.67.070	Distribution of Parks and Recreation Development Impact Funds
9.67.080	Periodic Review and Adjustment of Parks and Recreation Development Impact Fees
9.67.090	Fee Refunds
9.67.100	Fee Revision by Resolution
9.67.110	Regulations

9.67.010 Findings and Purpose

- A. The purpose of this Chapter is to implement the goals, objectives and policies of the City of Santa Monica's Open Space Element and Parks and Recreation Master Plan when new development is constructed within the City limits. Imposing a fee that is reasonably related to the burdens on and increased demand for the City's parks and recreation facilities created by new development will assist the City in constructing the required capital improvements to support the fulfillment of these goals, objectives and policies.
- B. The City has prepared a Parks and Recreation Development Impact Fee Nexus Study that demonstrates, and the City Council finds, that there is a reasonable relationship between the purpose for which the fees established by this Ordinance are to be used and the type of development projects on which the fees are imposed, and between the amount of the fees and the cost of the parks and recreation facilities or portion of the facilities attributable to the development on which the fees are imposed.
- C. It is the intent of the City Council that the fee required by this Chapter shall be supplementary to any conditions imposed upon a development project pursuant to other provisions of the Municipal Code, the City Charter, the Subdivision Map Act, the California Environmental Quality Act, and other state and local laws which may authorize the imposition of project specific conditions on development.

9.67.020 Applicability of Chapter

- A. The regulations, requirements and provisions of this Chapter and Council resolutions adopted pursuant hereto shall apply to all new Projects for which a development application was determined complete or an application for change(s) in existing use(s) was made on or after the effective date of this Ordinance. Any project subject to the provisions of this Chapter shall not be required to comply with Chapter 6.80 of the Santa Monica Municipal Code.

- B. Notwithstanding the above, the following projects, square footage and affordable residential units shall not be subject to the requirements of this Chapter:
1. Places of worship;
 2. City projects;
 3. Day care centers;
 4. Private K-12 schools;
 5. Multi-family rental housing projects developed by a nonprofit housing provider if the developer is receiving financial assistance through a public agency, so long as the multi-family rental housing project is an affordable housing project meeting the requirements of Santa Monica Municipal Code Section 9.52.020 and the project's affordable housing obligations will be secured by a regulatory agreement, memorandum of agreement, or recorded covenant with a public agency for a minimum period of fifty-five years;
 6. Re-occupancy of square footage in an existing building or structure if there is no change of use;
 7. Square footage used for outdoor dining in the public right of way; and
 8. Affordable housing units deed restricted to extremely low, very-low income, or low income households.

If a development is exempt from the fee at initial construction, but later converts to a development subject to this Ordinance, the converted square footage will be deemed net new square footage and the parks and recreation fee shall be paid prior to final approval of a building permit or, if required by State law, before the date of final inspection or the issuance of a certificate of occupancy, whichever occurs first.

9.67.030 Definitions

For the purpose of this Chapter, the following terms shall be defined as follows:

- A. "City Projects" shall mean City public works projects and City community facilities (e.g. libraries, public parking structures, recycling centers, and community centers), not including public/private partnerships.
- B. "Nexus Study" shall mean the Parks and Recreation Development Impact Fee Nexus Study prepared by Economic & Planning Systems, Inc. dated August 2013.
- C. "Project" shall mean any development having a gross new or additional floor area of one thousand square feet or more, or that changes an existing use to a different use that increases the demand on the parks and recreation system, or residential development of improved or unimproved land which adds dwelling units. Gross floor area for the purposes of this definition shall be the same as Section 9.52.020, or any successor legislation, but shall exclude parking area.
- D. "Parks and Recreation Development Impact Fee" shall mean a fee paid to the City by an applicant pursuant to Section 9.67.040 of this Chapter in connection with approval of a project to contribute to the acquisition and development of open space, parkland, and recreation facilities to meet demand generated by new development in order to maintain current service levels consistent with the goals, objectives and policies of the City's Open Space Element and Parks and Recreation Master Plan.

9.67.040 Parks and Recreation Mitigation Requirement

Except as provided in Section 9.67.050, the developer of a Project shall pay a Parks and Recreation Development Impact Fee in accordance with the following:

- A. **Parks and Recreation Development Impact Fee.** Fees shall be computed as follows:
1. For Single Family residential development projects that result in the addition of a dwelling unit:
 - a. \$7,636 per single family dwelling unit.
 2. For Multi-Family residential development projects that result in the addition of a dwelling unit:
 - a. \$4,138 per studio/one-bedroom multi-family dwelling unit.
 - b. \$6,665 per multi-family dwelling unit with two or more bedrooms.
 3. All non-residential projects shall pay the following based on the gross square footage of the proposed project:
 - a. Office: \$2.31 per square foot.
 - b. Medical Office: \$1.27 per square foot.
 - c. Retail: \$1.49 per square foot.
 - d. Lodging: \$3.11 per square foot.
 - e. Industrial: \$1.30 per square foot.
 4. The land use categories identified in subsections (1) – (3), above, shall have the following meanings:
 - a. Single Family Residential shall include Single Family.
 - b. Multi-Family Residential shall include: congregate care–non senior, congregate care–seniors, and multi–family.
 - c. Office shall include: creative office, financial institutions and office, and general office.
 - d. Medical office shall include: full service hospitals and medical offices, including medical clinics, and offices for medical professionals.
 - e. Retail shall include: animal kennels and veterinary hospitals, auto repair, car wash, non-residential adult care facilities, retail and wholesale construction-related materials, nurseries and garden centers, entertainment and recreational facilities, gas stations, and art galleries, nightclubs and bars, Personal services, Post-secondary educational facility, private studio, restaurants – fast food and cafes, restaurants – sit down, retail durable goods, retail food and markets, retail mixed, and retail non-food.
 - f. Lodging shall include: hotels, motels and other overnight accommodations.

- g. Industrial shall include: surface or structured auto inventory storage, heavy industrial and manufacturing, light industrial, utilities, warehouse and self-storage, and wholesale distribution and shipping.
- 5. For mixed residential/nonresidential development, the sum of the fee required for each component as set forth above in subdivisions (A)(2) and (A)(3) of this subsection.
- 6. The amount of legally permitted square footage to be demolished in an existing building or structure as a part of a Project shall be a credit in the calculation of the Parks and Recreation Development Impact Fee.

B. Timing of Fee Payment.

- 1. The Project applicant shall pay fees according to the schedule of fees in place on the date the fees are paid, except that the applicant for a vesting tentative map for a development project shall pay the fees in effect on the date the application for the vesting tentative map is deemed complete, as automatically adjusted.
- 2. No building permit for any Project shall be issued unless the fees have been paid, except for residential uses where state law requires payment before final inspection or the issuance of certificate of occupancy, whichever comes first. If state law applies, a contract to pay the fees shall be executed with the City, in which case, no final inspection shall be approved until the fees have been paid. If a residential development project contains more than one dwelling unit and is approved for development in phases, the developer shall pay the fees in installments based on the phasing of the residential development project. Each fee installment shall be paid at the time when the first dwelling unit within each phase of development has received its final inspection.
- 3. For all Projects subject to this Chapter, the City may require the payment of fees at an earlier time if the fees will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the City has a proposed construction schedule or plan prior to final inspection, or the fees are to reimburse the City for expenditures previously made.

9.67.050 Fee Adjustments and Waivers

- A. A developer of any Project subject to the fee described in Section 9.67.040 may request that the requirements of this Chapter be adjusted or waived based on a showing that applying the requirements of this Chapter would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.
- B. To receive an adjustment or waiver, the applicant must submit an application to the City Manager or her/his designee, at the time the applicant files a discretionary project application, or if no such application is required, a building permit application. The applicant shall bear the burden of presenting substantial evidence to support the request and set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.
- C. The City Manager or her/his designee shall render a written decision within ninety days after a complete application is filed. The City Manager's or designee's decision may be appealed to the City Council if such appeal is filed within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Chapter 9.37 Common Procedures of this Code or any successor thereto.
- D. If the City Manager or her/his designee, or City Council on appeal, upon legal advice provided by or at the behest of the City Attorney, determines that applying the requirements of this Chapter would

effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property, the affordable housing fee requirements shall be adjusted or waived to reduce the obligations under this Chapter to the extent necessary to avoid an unconstitutional result. If the City Manager or her/his designee, or City Council on appeal, determines that no violation of the United States or California Constitutions would occur through application of this Chapter, the requirements of this Chapter remain fully applicable.

- E. If an adjustment or waiver is granted, any change in use from the approved project shall invalidate the adjustment or waiver.

9.67.060 Fee Revenue Account

Pursuant to Government Code Section 66006, the Parks and Recreation Development Impact Fee Reserve Account is hereby established. The fees paid to the City pursuant to the provisions of this Chapter shall be deposited into the Parks and Recreation Development Impact Fee Reserve Account and used solely for the purpose described in this Chapter. All monies deposited into the Reserve Account shall be held separate and apart from other City funds. All interest or other earnings on the unexpended balance in the Reserve Account shall be credited to the Reserve Account.

9.67.070 Distribution of Parks and Recreation Development Impact Funds

All monies and interest earnings in the Parks and Recreation Development Impact Fee Reserve Account shall be expended solely on the development, design, construction, and administration costs related to the acquisition of land for parks, the improvement of existing and new parkland, and the development of new parks and recreation facilities needed to accommodate additional occupants of new development projects. Such expenditures may include, but are not necessarily limited to the following:

- A. Reimbursement for all direct and indirect costs incurred by the City to construct parks and recreation improvements pursuant to this Chapter, including but not limited to, the cost of land acquisition, planning, legal consultation, engineering, design, construction, construction management, materials and equipment.
- B. Costs of issuance or debt service associated with bonds, notes or other security instruments issued to fund parks and recreation improvements as identified.
- C. Reimbursement for administrative costs incurred by the City in establishing or maintaining the Parks and Recreation Development Impact Fee Reserve Account required by this Chapter, including but not limited to the cost of studies to establish the requisite nexus between the fee amount and the use of fee proceeds and yearly accounting and reports.

No portion of the Parks and Recreation Impact Fee may be diverted to other purposes by way of loan or otherwise.

9.67.080 Periodic Review and Adjustment of Parks and Recreation Development Impact Fees

To account for inflation in construction costs, the fee imposed by this ordinance shall be adjusted automatically on July 1 of each fiscal year, beginning on July 1, 2015, by a percentage equal to the appropriate Construction Cost Index as published by Engineering News Record, or its successor publication, for the preceding twelve (12) months.

9.67.090 Fee Refunds

- A. If a Parks and Recreation development impact fee is collected on a Project and the permit for that Project later expires, is vacated or voided before commencement of construction, the developer shall, upon request, be entitled to a refund of the unexpended Parks and Recreation development impact fee paid, less a portion of the fee sufficient to cover costs of collection, accounting for and administration of the fee paid. Any request for a refund shall be submitted in writing to the Planning and Community Development Director within one year of the date that the permit expires or is vacated or voided. Failure to submit a timely request for refund shall constitute a waiver of any right to a refund.
- B. Fees collected pursuant to this Chapter which remain unexpended or uncommitted for five or more fiscal years after deposit into the Parks and Recreation Development Impact Fee Reserve Account shall be accounted for or may be refunded as provided by state law.

9.67.100 Fee Revisions by Resolution

The amount of the Parks and Recreation development impact fees and the formula for the automatic annual adjustment established by this Chapter may be reviewed and revised periodically by resolution of the City Council. This Chapter shall be considered enabling and directive in this regard.

9.67.110 Regulations

The City Manager, or her/his designee, is authorized to adopt written administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth within this Chapter.

Chapter 9.68 Affordable Housing Commercial Linkage Fee Program

Sections:

9.68.010	Findings and Purpose
9.68.020	Applicability of Chapter
9.68.030	Definitions
9.68.040	Affordable Housing Mitigation Requirement
9.68.050	Fee Adjustments and Waivers
9.68.060	Fee Revenue Account
9.68.070	Distribution of Affordable Housing Commercial Linkage Fee Funds
9.68.080	Periodic Review and Adjustment of Affordable Housing Commercial Linkage Fees
9.68.090	Fee Refunds
9.68.100	Fee Revision by Resolution
9.68.110	Regulations

9.68.010 Findings and Purpose

- A. The purpose of this Chapter is to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the City. As detailed in the findings supporting the ordinance codified in this Chapter, the requirements of this Chapter are based on a number of factors including, but not limited to, the City's long-standing commitment to economic diversity; the serious need for affordable housing as reflected in local, State, and Federal housing regulations and policies; the demand for affordable housing created by commercial development; and the impact that the lack of affordable housing production has on the health, safety, and welfare of the City's residents including its impacts on traffic, transit and related air quality impacts, and the demands placed on the regional transportation infrastructure. Imposing a fee that is reasonably related to the burdens created by new commercial development on the City's need for affordable housing will enable the City to fund development of affordable housing units that will contribute to addressing these impacts and fulfilling these goals.
- B. The City has prepared a Commercial Nexus Study and Linkage Fee Analysis. It shows, and the City Council finds that there is a reasonable relationship between the purpose for which the fees established by this Ordinance are to be used and the type of development projects on which the fees are imposed, and between the amount of the fees and the cost of the affordable housing units or portion of the units attributable to the development on which the fees are imposed.
- C. It is the intent of the City Council that the fee required by this Chapter shall be supplementary to any conditions imposed upon a development project pursuant to other provisions of the Municipal Code, the City Charter, the Subdivision Map Act, the California Environmental Quality Act, other state and local laws, which may authorize the imposition of project specific conditions on development.

9.68.020 Applicability of Chapter

- A. The regulations, requirements and provisions of this Chapter and Council resolutions adopted pursuant hereto shall apply to any commercial portion of any new Project for which a development application was determined complete or an application for change(s) in existing use(s) was made on or after the effective date of this Ordinance. Any project subject to the provisions of this Chapter shall not be required to comply with Part 9.04.10.12 of the Santa Monica Municipal Code, Project Mitigation Measures.
- B. Notwithstanding the above, the following projects or portions of projects as specified thereof shall not be subject to the requirements of this Chapter:
 - 1. Places of worship;
 - 2. City projects;
 - 3. Day care centers;
 - 4. Private K-12 schools;
 - 5. Commercial portions of multi-family rental housing projects developed by a nonprofit housing provider if the developer is receiving financial assistance through a public agency, so long as the multi-family rental housing project is an affordable housing project meeting the requirements of Santa Monica Municipal Code Section 9.04.02.030.025 and the project's affordable housing obligations will be secured by a regulatory agreement, memorandum of agreement, or recorded covenant with a public agency for a minimum period of fifty-five years;
 - 6. Re-occupancy of square footage in an existing building or structure if there is no change of use;
 - 7. Square footage used for outdoor dining in the public right of way.

If a development is exempt from the fee at initial construction, but later converts to a commercial development subject to this Ordinance, the converted square footage will be deemed net new commercial square footage and the housing impact fee shall be paid prior to final approval of a building permit.

9.68.030 Definitions

For the purpose of this Chapter, the following terms shall be defined as follows:

- A. "City Projects" shall mean City public works projects and City community facilities (e.g. libraries, public parking structures, recycling centers, and community centers), not including public/private partnerships.
- B. "Nexus Study" shall mean the Commercial Nexus Study and Linkage Fee Analysis prepared by Rosenow Spevacek Group, Inc., dated July 2013.
- C. "Project" shall mean any development having a commercial use component and gross new or additional floor area of one thousand square feet or more or that changes an existing use to a different use that increases the demand for affordable housing. Gross floor area for the purposes of this definition shall be the same as Section 9.52.020, or any successor legislation, but shall exclude parking area.
- D. "Affordable Housing Commercial Linkage Fee" shall mean a fee paid to the City by an applicant pursuant to Section 9.68.040 of this Chapter in connection with approval of a project, to contribute

to the creation of affordable housing production or preservation to offset additional need for affordable housing generated by new commercial development.

9.68.040 Affordable Housing Mitigation Requirement

Except as provided in Section 9.68.050, the developer of a Project shall pay an affordable housing commercial linkage fee in accordance with the following:

- A. **Affordable Housing Commercial Linkage Fee.** Fees shall be computed as follows:
1. All non-residential portions of a Project shall pay the following based on the gross square footage of each use included in the proposed Project:
 - a. Retail: \$9.75 square foot.
 - b. Office: \$11.21 per square foot.
 - c. Hotel/Lodging: \$3.07 per square foot.
 - d. Hospital: \$6.15 per square foot.
 - e. Industrial: \$7.53 per square foot.
 - f. Institutional: \$10.23 per square foot.
 - g. Creative Office: \$9.59 per square foot.
 - h. Medical Office: \$6.89 per square foot.
 2. The land use categories identified in subsections (a) – (h), above, shall have the following meanings:
 - a. Retail shall include: animal kennels and veterinary hospitals, auto repair, car wash, retail and wholesale construction-related materials, nurseries and garden centers, entertainment and recreational facilities, gas stations, art galleries, nightclubs and bars, Personal services, Post-secondary educational facility, private studio, restaurants – fast food and cafes, restaurants – sit down, retail durable goods, retail food and markets, retail mixed, and retail non-food.
 - b. Office shall include: financial institutions and office, and general office.
 - c. Hotel/Lodging shall include: hotels, motels and other overnight accommodations.
 - d. Hospital shall include: full service hospitals.
 - e. Industrial shall include: surface or structured auto inventory storage, City maintenance facilities and bus yards, heavy industrial and manufacturing, light industrial, utilities, warehouse and self-storage, and wholesale distribution and shipping.
 - f. Institutional shall include: educational and cultural facilities.
 - g. Creative Office shall include: offices, production spaces and work spaces of establishments that are in the business of the development of creative property, including but not limited to, advertising, architectural services, broadcasting,

communications, computer software design, entertainment, engineering, graphic design, interior design, internet content, landscape design, and similar uses.

- h. Medical Office shall include: Medical office, including medical clinics, and offices for medical professionals.
- 3. The amount of legally permitted non-residential square footage to be demolished in an existing building or structure, or to be removed from an outdoor area used as part of a service station or for auto dealer sales, display and inventory storage, as a part of a Project shall be a credit in the calculation of the Affordable Housing Commercial Linkage Fee. Outdoor area used as part of a gas station shall not include setbacks, landscaping, parking and other paved areas used solely for access and circulation. Credit shall be applied on a per square foot basis according to per square foot fee assigned to the type of commercial use that existed on the site prior to the new Project application submittal.

B. Timing of Fee Payment.

- 1. The Project applicant shall pay fees according to the schedule of fees in place on the date the fees are paid, except that the applicant for a vesting tentative map for a development project shall pay the fees in effect on the date the application for the vesting tentative map is deemed complete, as automatically adjusted.
- 2. No building permit for any Project shall be issued unless the fees have been paid.

9.68.050 Fee Adjustments and Waivers

- A. A developer of any Project subject to the fee described in Section 9.68.040(A) may request that the requirements of this Chapter be adjusted or waived based on a showing that applying the requirements of this Chapter would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.
- B. To receive an adjustment or waiver, the applicant must submit an application to the City Manager or her/his designee, at the time the applicant files a discretionary project application, or if no such application is required, a building permit application. The applicant shall bear the burden of presenting substantial evidence to support the request and set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.
- C. The City Manager or her/his designee, shall render a written decision within ninety days after a complete application is filed. The City Manager's or designee's decision may be appealed to the City Council if such appeal is filed within fourteen consecutive calendar days from the date that the decision is made in the manner provided in Chapter 9.37 Common Procedures of this Code or any successor thereto.
- D. If the City Manager or her/his designee, or City Council on appeal, upon legal advice provided by or at the behest of the City Attorney, determines that applying the requirements of this Chapter would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property, the affordable housing fee requirements shall be adjusted or waived to reduce the obligations under this Chapter to the extent necessary to avoid an unconstitutional result. If the City Manager or her/his designee, or City Council on appeal, determines that no violation of the United States or California Constitutions would occur through application of this Chapter, the requirements of this Chapter remain fully applicable.
- E. If an adjustment or waiver is granted, any change in use from the approved project shall invalidate the adjustment or waiver.

9.68.060 Fee Revenue Account

Pursuant to Government Code Section 66006, the Affordable Housing Commercial Linkage Fee Reserve Account is hereby established. The fees paid to the City pursuant to the provisions of this Chapter shall be deposited into the Affordable Housing Commercial Linkage Fee Reserve Account and used solely for the purpose described in this Chapter. All monies deposited into the Reserve Account shall be held separate and apart from other City funds. All interest or other earnings on the unexpended balance in the Reserve Account shall be credited to the Reserve Account.

9.68.070 Distribution of Affordable Housing Commercial Linkage Fee Funds

All monies and interest earnings in the Affordable Housing Commercial Linkage Fee Reserve Account shall be expended solely on the production or preservation of affordable housing to help fulfill the need identified in the Nexus Study to increase the supply of housing affordable to worker households of extremely low, very low, low, or moderate income, or such other report as may be prepared from time to time to document the reasonable fair share of the costs to mitigate the increased need for affordable housing that is created by new commercial development. Such expenditures may include, but are not necessarily limited to the following:

- A. Reimbursement for all direct and indirect costs incurred by the City to fund the production of affordable housing pursuant to this Chapter, including but not limited to, the cost of land and right-of-way acquisition, planning, legal advice, engineering, design, construction, construction management, materials and equipment, or issuing loans to nonprofit affordable housing developers to acquire land and/or to rehabilitate existing buildings or build new developments to increase the supply of affordable housing units.
- B. Costs of issuance or debt service associated with bonds, notes or other security instruments issued to fund affordable housing needs identified.
- C. Reimbursement for administrative costs incurred by the City in establishing or maintaining the Affordable Housing Commercial Linkage Fee Reserve Account required by this Chapter, including but not limited to the cost of studies to establish the requisite nexus between the fee amount and the use of fee proceeds and yearly accounting and reports.

No portion of the Affordable Housing Commercial Linkage Fee Reserve Account may be diverted to other purposes by way of loan or otherwise.

9.68.080 Periodic Review and Adjustment of Affordable Housing Commercial Linkage Fees

To account for inflation in affordable housing development costs, the fee imposed by this ordinance shall be adjusted automatically on July 1 of each fiscal year, beginning on July 1, 2015, by a percentage equal to the appropriate Construction Cost Index as published by Engineering News Record, or its successor publication, for the preceding twelve (12) months.

9.68.090 Fee Refunds

- A. If an affordable housing commercial linkage fee is collected on a Project and the permit for that Project later expires, is vacated or voided before commencement of construction, the developer shall, upon request, be entitled to a refund of the unexpended housing commercial linkage fee paid, less a portion of the fee sufficient to cover costs of collection, accounting for and

administration of the fee paid. Any request for a refund shall be submitted in writing to the Director of Planning and Community Development within one year of the date that the permit expires or is vacated or voided. Failure to timely submit a request for refund shall constitute a waiver of any right to a refund.

- B. Fees collected pursuant to this Chapter which remain unexpended or uncommitted for five or more fiscal years after deposit into the Affordable Housing Commercial Linkage Fee Reserve Account shall be accounted for or may be refunded as provided by state law.

9.68.100 Fee Revision by Resolution

The amount of the affordable housing commercial linkage fee and the formula for the automatic annual adjustment established by this Chapter may be reviewed and revised periodically by resolution of the City Council. This Chapter shall be considered enabling and directive in this regard.

9.68.110 Regulations

The City Manager, or her/his designee, is authorized to adopt written administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth within this Chapter.