

January 30, 2020

SENT VIA EMAIL

Planning and Land Use Management Committee
Los Angeles City Council
c/o Office of the City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Re: Council File Number: 20-0052
Case Number: DIR-2016-3291-CDP-MEL-1A (“Project”)
Project Site: 635-637 E. San Juan Avenue, Venice (“Property”)

Members of the Planning and Land Use Committee:

The undersigned represents Project proponent 187 Monterey Holding LLC, the applicant and owner of the above captioned Property site. I have previously submitted to the Department of City Planning (“City Planning”) and to the West Los Angeles Area Planning Commission (“WLA APC”) letters, dated April 8, September 9 and November 11, 2019, and additional documentation in support of the Project. It is my hope that the members of the PLUM committee will review said previous submittals to more fully understand the reasons for supporting the Project and denying the subject appeal.

The focused purpose of this letter is to address the following language contained in the Section 245 motion approved by the City Council on January 21, 2020 concerning Council File No. 20-0052:

“...approval of this project undermines the mandate of the State’s Mello Act to preserve the availability of affordable housing in the Coastal Zone.”

Although the preservation of affordable housing in the Coastal Zone area of Los Angeles is a most important goal, the Council’s motion ignores pertinent parts of the Mello Act (attached hereto as Exhibit 1) directly germane to the disposition of this appeal. In addition, pertinent portions of the City’s Interim Administrative Procedures for Complying with the Mello Act (“Interim Guidelines) mirror the provisions of the Mello Act discussed below.

Mello Act Sections 65590 (b) (1-4), and as noted above, pertinent parts of the Interim Guidelines provide that the requirement to provide for replacement affordable dwelling units in the development of a new project shall not apply if the local government agency determines that the replacement of affordable dwelling units is not feasible. The applicable provisions of the Mello Act are highlighted on the attached Exhibit 1.

Pursuant to the provisions of the above noted Mello Act sections and the Interim Guidelines, the applicant herein submitted to City Planning a Feasibility Study prepared by consultant Howard Robinson & Associates concerning the development of the subject Property site. An Executive Summary of the Feasibility Study is attached hereto as Exhibit 2.

As stated in the Feasibility Study...” the study shows that providing RAUs is *economically infeasible* (emphasis added) based on analysis of the costs and revenues for construction of such a project, not only on-site, but also off-site including locations nearby in Venice, in San Pedro, and within 30 miles of the Coastal Zone (as required by the Mello Act, California Government Code Sec. 65590(d). In all four financial pro-forma scenarios, after carefully analyzing costs and revenues for two SFD and one ADU project, we have concluded that such a project would not be financially feasible... In conclusion, we have found it is financially infeasible to develop an affordable unit on-site. Off-site replacement projects are similarly infeasible.”

Based upon the substance of the Feasibility Report, and consistent with the procedural provisions of the Mello Act and the Interim Guidelines, the WLA APC at page F-11 of its Letter of Determination of November 20, 2019 made the following finding: *“Based upon review of the revised feasibility study and supplemental documents submitted by the Applicant, it would not be feasible to replace all of the Affordable Existing Residential Units. As such, no Affordable Replacement Units are required for the project.”* (emphasis added).

As the members of PLUM may be aware, City Planning on December 11, 2019 has initiated the circulation, public review, and ultimately the City Council consideration of a revision to the city’s Mello Act ordinance to ensure that a project in the Coastal Zone is compliant with the State law. A copy of the *DRAFT* Mello Act city ordinance is attached for your information as Exhibit 3. The *PROPOSED* new ordinance would, among other changes to the existing Interim Guidelines, standardize the methodology and consideration for financial feasibility studies, the type of study utilized by the applicant in this instant matter.

However, as should be obvious to the members of PLUM, given that the consideration of the new draft Mello Act ordinance has just begun its citywide review process, adoption of any such ordinance will not take place, if at all, until much later this year.

Accordingly, my client should be, and is entitled to rely on following the substantive and procedural provisions contained in the existing Mello Act and Interim Guidelines. As such, the propriety and use of financial feasibility studies is governed by the existing state Mello Act and the existing city Interim Guidelines. The WLA APC followed the applicable law by denying the subject appeal and approving the Project before you.

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It is the position of the undersigned and the applicant that the members of PLUM and the entire City Council must adhere to, and support the determination of, the WLA APC because **it is not legally valid to change the rules in the middle of the game.**

For all the reasons addressed above, request is hereby made to the members of the Planning and Land Use Management Committee of the City Council to deny the subject appeal with reference to the Project.

Thank you for your consideration of this submission.

Respectfully submitted,

Steve Kaplan



EXHIBIT 1

“Mello Act”

65590.

- (a) In addition to the requirements of Article 10.6 (commencing with Section 65580), the provisions and requirements of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone.
- (b) The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit. In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.

For purposes of this subdivision, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or family was evicted from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this subdivision. If a substantial number of persons or families of low or moderate income were evicted from a single residential development within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this subdivision and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this subdivision.

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

- (1) The conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer dwelling units.

(2) The conversion or demolition of a residential structure for purposes of a nonresidential use which is either "coastal dependent," as defined in Section 30101 of the Public Resources Code, or "coastal related," as defined in Section 30101.3 of the Public Resources Code. However, the coastal-dependent or coastal-related use shall be consistent with the provisions of the land use plan portion of the local government's local coastal program which has been certified as provided in Section 30512 of the Public Resources Code. Examples of coastal-dependent or coastal-related uses include, but are not limited to, visitor-serving commercial or recreational facilities, coastal-dependent industry, or boating or harbor facilities.

(3) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone, and three miles inland therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.

(4) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required by this subdivision. As otherwise required by this subdivision, the replacement units shall,

(i) be located within the coastal zone if feasible, or, if location within the coastal zone is not feasible, shall be located within three miles of the coastal zone, and

(ii) shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.

The requirements of this subdivision for replacement dwelling units shall not apply to the demolition of any residential structure which has been declared to be a public nuisance under the provisions of Division 13 (commencing with Section 17000) of the Health and Safety Code, or any local ordinance enacted pursuant to those provisions.

For purposes of this subdivision, no building, which conforms to the standards which were applicable at the time the building was constructed and which does not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Uniform Building Code as adopted within the jurisdiction for new construction.

(c) The conversion or demolition of any residential structure for purposes of a nonresidential use which is not "coastal dependent", as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location. If a local government makes this determination and authorizes the conversion or demolition of the residential structure, it shall require replacement of any dwelling units occupied by persons and families of low or moderate income pursuant to the applicable provisions of subdivision (b).

- (d) New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees.
- (e) Any determination of the "feasibility" of an action required to be taken by this section shall be reviewable pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.
- (f) The housing provisions of any local coastal program prepared and certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code prior to January 1, 1982, shall be deemed to satisfy all of the requirements of this section. Any change or alteration in those housing provisions made on or after January 1, 1982, shall be subject to all of the requirements of this section.
- (g) As used in this section:
 - (1) "Conversion" means a change of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a mobilehome, or a mobilehome lot in a mobilehome park, or a residential hotel to a nonresidential use.
 - (2) "Demolition" means the demolition of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, which has not been declared to be a public nuisance under Division 13 (commencing with Section 17000) of the Health and Safety Code or any local ordinance enacted pursuant to those provisions.
 - (3) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.
- (h) With respect to the requirements of Sections 65583 and 65584, compliance with the requirements of this section is not intended and shall not be construed as any of the following:
 - (1) A statutory interpretation or determination of the local government actions which may be necessary to comply with the requirements of those sections; except that compliance with this section shall be deemed to satisfy the

requirements of paragraph (2) of subdivision (c) of Section 65583 for that portion of a local government's jurisdiction which is located within the coastal zone.

- (2) A limitation on the program components which may be included in a housing element, or a requirement that a housing element be amended in order to incorporate within it any specific provision of this section or related policies. Any revision of a housing element pursuant to Section 65588 shall, however, take into account any low- or moderate-income housing which has been provided or required pursuant to this section.
- (3) Except as otherwise specifically required by this section, a requirement that a local government adopt individual ordinances or programs in order to implement the requirements of this section.
 - (i) No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.
 - (j) Local governments may impose fees upon persons subject to the provisions of this section to offset administrative costs incurred in order to comply with the requirements of this section.
 - (k) This section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

65590.1

Any local government which receives an application as provided in Section 30600.1 of the Public Resources Code to apply the requirements of Section 65590 to a proposed development shall apply these requirements within 90 days from the date on which it has received that application and accepted it as complete. In the event that the local government has granted final discretionary approval to the proposed development, or has determined that no such approval was required, prior to receiving the application, it shall, nonetheless, apply the requirements and is hereby authorized to conduct proceedings as may be necessary or convenient for the sole purpose of doing so.

EXHIBIT 2



Howard Robinson & Associates

October 25, 2019

**RE: FEASIBILITY STUDY FOR MELLO ACT DETERMINATION
635-637 SAN JUAN AVE., VENICE, CA 90291
CASE NO. DIR-2016-3291-CDP-MEL**

A financial feasibility study was initially submitted to the Los Angeles Department of City Planning on August 25, 2017 for review. After being reviewed by City staff, the study was accepted and the request for Mello Clearance was granted. The approved Mello Clearance allowed for the demolition of an existing single-family dwelling (SFD) and duplex and the construction of two new SFDs as part of a proposed Small Lot Subdivision, pursuant to Case No. DIR-2016-3291-CDP-MEL and related Case No. AA-2016-3290-PMLA-SL. Both cases were approved with conditions on June 28, 2019.

Both cases were appealed following their approval. On August 22, 2019, the case planner requested an addendum to the original study examining four additional scenarios, submitted August 27, 2019. This study is a further revision that contains an analysis of the financial feasibility of providing two market rate units and an affordable Accessory Dwelling Unit (ADU). In addition, this study contains an analysis of the project with an attached 2-bedroom ADU.

Financial feasibility is determined by the profit of the entire project, so an estimate of the sale price per square foot of a market rate unit is included as Exhibits 12 and 13. Exhibits 2-5 calculate the profit or loss expected from the construction and sale of two market rate units and one affordable ADU. Exhibits 2a, 3a, 4a, and 5a make the same calculations but with a 2-bedroom ADU. Each of these exhibits examine the new configuration on-site, in Venice, San Pedro, or within three miles of the Coastal Zone. Exhibits 6-11 provide documentation for the analysis in the earlier exhibits

The property is currently improved with an SFD and a duplex. The Los Angeles Housing and Community Investment Department (HCID) has determined that three (3) affordable units exist at the site. See the attached determination letter dated August 22, 2017 (Exhibit 1)¹. The proposed project is to construct two (2) SFDs in a Small Lot Subdivision with one ADU attached to one of the SFDs.

¹ HCID issued an earlier version of the Determination Letter on January 13, 2015. That letter inaccurately referred to the existing improvements as a triplex. Based on LADBS permit documents, HCID issued a corrected Determination Letter on August 22, 2017, accurately describing the existing improvements at the time of their original determination as a duplex and an SFD.

Howard Robinson & Associates
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The Mello Act, at California Government Code, Sec. 65590(b) states "the requirements ... for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible...". Subsection 65590(b) (1) lists "[t]he conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer dwelling units" as one of the types of project not required to provide replacement affordable units absent a finding of feasibility. Section 65590(g)(3), defines "Feasible" as meaning "... capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technical factors". It is important to note that the City must show feasibility with respect to all four factors if it determines that providing a replacement affordable unit (RAU) is feasible.

Although the burden of proof to show feasibility is on the local government, the applicant is submitting this study to assist the City in its analysis. The study shows that providing RAUs is economically infeasible based on analysis of the costs and revenues for construction of such a project, not only on-site, but also off-site including locations nearby in Venice, in San Pedro, and within three (3) miles of the Coastal Zone (as required by the Mello Act, California Government Code, Sec. 65590(d)).

In all four financial pro-forma scenarios, after carefully analyzing costs and revenues for a two SFD and one ADU project, we have concluded that such a project would not be financially feasible.

Please see the chart below for a summary of our findings:

Site (One Bedroom ADU)	Total Project Cost (\$)	Net Sale Price (\$)	Profit or Loss (\$)
635-637 San Juan Ave. (Subject Site)	4,687,340	3,126,780	-1,560,560
Generic Venice Site	4,515,504	3,126,780	-1,388,724
Generic San Pedro Site	3,429,909	1,563,390	-1,866,519
Generic Site w/in 3 Miles of Coastal Zone	3,511,998	1,563,390	-1,948,608
Site (Two Bedroom ADU)	Total Project Cost (\$)	Net Sale Price (\$)	Profit or Loss (\$)
635-637 San Juan Ave. (Subject Site)	4,687,340	2,943,720	-1,743,655
Generic Venice Site	4,515,504	2,943,720	-1,571,819
Generic San Pedro Site	3,429,909	1,471,860	-1,958,084
Generic Site w/in 3 Miles of Coastal Zone	3,511,998	1,471,860	-2,040,173

As part of the feasibility study originally submitted in 2017, the Applicant prepared a detailed construction hard cost estimate for a similarly sized market rate 2-unit project which shows a cost of \$349.91 per square foot (see Exhibit 7 - Construction Hard Cost Estimate). In the 2 years

since this estimate was prepared, construction hard costs have risen. Thus, using this older construction estimate ensures that the hard costs are estimated at a moderate level.

The Applicant has maintained records of the soft costs incurred during this development. A running total of these costs as of October 3, 2019 is attached as Exhibit 8 of this study. As the Applicant has already spent this amount, the attached cost breakdown represents the absolute minimum of what this development will cost by the time it is completed. Using this amount as the total soft cost estimate ensures that this estimate is as conservative as possible.

The Land Cost for the Subject Site is the applicant's purchase price from March 2015 (Exhibit 6). To estimate the Land Cost for the off-site locations, a standard lot size of 5,000 sq. ft. is assumed, then multiplied by the average sale price per sq. ft. for each area, as determined in evaluations of comparable sales of recently sold vacant or "tear-down" lots (see Exhibits 9-11).

Exhibits 12 and 13 provide sales of comparable homes in Venice and other parts of Los Angeles. The per square foot sale price associated with the sales of these homes is used to calculate the revenue the sale of the market rate units in Exhibits 2-5 are expected to return. The per square foot sale price used in the analysis is slightly increased from the number found from the comparable sales to be as optimistic as possible with the projected revenue from the sale of the market rate units.

In conclusion, we have found it is financially infeasible to develop an affordable unit on-site. Off-site replacement projects are similarly infeasible.

Thank you for the opportunity to present our findings. Please call with any questions.

Sincerely,



Susan Steinberg
Land Use Consultant

Contact information is as follows:

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EXHIBIT 3

ORDINANCE NO. _____

Section 1. Section 12.21.H is hereby amended to the Los Angeles Municipal Code to read as follows:

H. **Mello Act Compliance in Coastal Zone Areas.** Housing preservation and development requirements to comply with California Government Code Section 65590.

1. **Purpose.** To establish the review of Coastal Zone projects that result in the demolition, loss, or conversion of Residential Units and/or the development of new Residential Units. The following principles should guide the interpretation of these regulations:

- (a) Existing Residential Units, both affordable and market rate, shall be preserved and maintained unless a residential use is no longer feasible at that location.
- (b) Converted or Demolished Residential Units occupied by Extremely Low, Very Low, Low or Moderate Income persons or households shall be replaced on a one-for-one basis, with a like-for-like affordability level, or lower.
- (c) New Housing Developments shall provide Inclusionary Residential Units for Extremely Low, Very Low, and/or Low Income persons or households.

2. **Applicability.**

- (a) **Applications for Demolition, Conversion, and/or New Housing Developments in the Coastal Zone.** Every Discretionary and Non-Discretionary Application for a Demolition, Conversion, or New Housing Development in the Coastal Zone shall be reviewed pursuant to these regulations and Mello Act Implementing Guidelines, even when the Application is regulated by any geographically specific plan or Local Coastal Program. The requirements of this Subsection also apply to any Discretionary or Non-Discretionary Application exempted from the requirement to obtain a coastal development permit.

In the case of conflict between this Subsection H and any applicable specific plan, certified Local Coastal Program, or other law or regulation, the requirements that result in the greatest number of Affordable Replacement Units and inclusionary Residential Units, with the deepest affordability levels, shall prevail.

- (b) **Relationship to other Affordable Housing Requirements.** Where other regulations require the provision of affordable dwellings to be replaced or additionally provided as a part of the project, those regulations that result in the greatest number of affordable units with the deepest affordability levels shall prevail; fees charged or collected and calculated based on residential use, to provide for affordable dwellings, shall comply with the provisions contained herein; those fees charged based upon non-residential use, to provide for affordable dwellings, shall be unaffected by the provisions contained herein.

3. **General Provisions.**

- (a) **Conversion or Demolition of Existing Residential Units or Residential Uses to a Non-Residential Use.** Conversion or demolition of any Residential Unit or residential use, for purposes of a non-residential use that is not Coastal-Dependent, is prohibited, unless a residential use is no longer feasible at that

location. This prohibition applies to all Residential Units and uses, regardless of the income of the tenants, the form of ownership, rental rates, for sale price, or appraised value. A change of use or Conversion of a Residential Unit or use to an Apartment Hotel will constitute a conversion to a non-residential use.

(1) **Presumptions.** Continued feasibility of a residential use with the same number of Residential Units is presumed by the City. It is the applicant's burden of proof to show otherwise, with Substantial Credible Evidence. The Director of City Planning will be responsible for determining continued feasibility of a residential use.

- (i) Proximity to other existing, viable residential uses is strong evidence that a residential use is feasible.
- (ii) Infeasibility cannot be claimed merely because the site is zoned to allow for non-residential uses. An existing land use restriction that prohibits residential use may be cited as part of an infeasibility claim. If an applicant has non-conforming or other rights that permit a continued residential use, the Applicant may not argue that the existing zoning renders a residential use infeasible.
- (iii) Infeasibility cannot be claimed because of an applicant-initiated zone change, or lapse in non-conforming rights, resulting in a prohibition of residential use of the property.
- (iv) Infeasibility cannot be claimed merely because the site is zoned for industrial use if a prior land use determination approved residential use of the site (i.e. joint live-work units). A Zoning Administrator's grant runs with the land.
- (v) Infeasibility cannot be claimed merely because the current premises are dilapidated or are in a state of disrepair due to failure to make reasonable repairs or to adequately maintain the site. The City may require that substandard conditions are corrected prior to consideration further challenges to the City's presumption of feasibility.
- (vi) An Applicant may not claim infeasibility unless they can clearly document an inability to rent or sell the current premises based on the site's unique characteristics or circumstances. Unique characteristics or circumstances include proximity to noxious and incompatible existing uses that are likely to remain, and that render a continued residential use infeasible. If challenging the City's presumption, an Applicant may not cite mere proximity to commercial or industrial uses.

(b) **Conversion or Demolition of Affordable Existing Residential Units.** Affordable Existing Residential Units are to be preserved and replaced as determined by the Los Angeles Housing and Community Investment Department (HCIDLA). HCIDLA has sole responsibility for determining whether any existing residential units are Affordable Existing Residential Units. HCIDLA has the authority to specify the processes Applicants must follow in order for HCIDLA to make determinations pursuant to this Paragraph (b).

(1) **Presumptions.**

- (i) It is the burden of the applicant to show, through Substantial Credible Evidence, that an existing Residential Unit proposed for conversion or demolition is not an Affordable Existing Residential Unit.
 - (ii) All Residential Units subject to the Rent Stabilization Ordinance (beginning with Section 151 of the Los Angeles Municipal Code), currently or within the last 5 years, will be presumed to be affordable to Very Low Income Households.
 - (iii) Notices to Vacate, Evictions, or "cash-for-keys" agreements conducted within the five years preceding the HCIDLA Mello Act affordability analysis will be presumed to have been conducted for the purposes of evading compliance with the Mello Act. In such a case, all Residential Units part of such an agreement will be considered as Affordable Existing Units to Very Low Income Households.
 - (iv) A Residential Unit will be considered as occupied by Very Low Income household if a person or family was issued a Notice to Vacate or evicted from that dwelling unit within five years prior to the filing of an application for a Mello Act Compliance Review to convert or demolish the unit.
 - (v) If a substantial number of persons or families of extremely low, very low, low, or moderate income received Notices to Vacate or were evicted from a single residential development within five years prior to the filing of an application for a Mello Act Compliance Review to convert or demolish the structure, the evictions will be presumed to have been for the purpose of evading compliance with the Mello Act. It will then be presumed that all these persons or families were part of Very Low Income households. The applicant for the conversion or demolition will bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this Subsection H.
 - (vi) Unpermitted dwelling units will be presumed to be affordable to Very Low Income Households.
 - (vii) Residential Units that can be shown with Substantial Credible Evidence to have been vacant for more than the 5 years preceding the filing of an application for a Mello Act Compliance Review will not be considered affordable.
 - (vi) All other Residential Units are presumed to be affordable for a Low Income Household.
- (2) **Replacement Units.** HCIDLA will determine, based on the project description and the identified Affordable Existing Residential Units, the number, level of affordability, and number of bedrooms and bathrooms for each Affordable Replacement Unit required to be provided by the project.

- (i) Affordable Existing Residential Units located within single family dwellings or duplexes, on a lot containing no more than two dwelling units, will be replaced if it is feasible to do so.
 - (ii) All Affordable Existing Residential Units located within the same structure, on the same property, or within a Unified Development or Serial Development, and containing three or more Residential Units, will be replaced. A Feasibility Study will not be accepted or considered to reduce this requirement.
 - (iii) An Affordable Replacement Unit will be provided at the same level of affordability, or lower, as the Affordable Existing Residential Unit being replaced.
 - (iv) An Affordable Replacement Unit will contain the same number of bedrooms and bathrooms as the Affordable Existing Residential Unit it is replacing.
 - (v) **Substitution of Affordable Replacement Units.** If approved by HCIDLA, a multi-bedroom Affordable Replacement Unit may be substituted by multiple Affordable Replacement Units containing in total, the same number of bedrooms as the Affordable Existing Residential Unit being replaced. However, the converse is not permitted.
 - (vi) All Affordable Replacement Units will be provided pursuant Paragraph (g) of this Subdivision 3. The terms of the Affordable Housing Provision Plan (AHPP) are not appealable to other City Departments and no other City Department may modify the terms and requirements of the AHPP.
- (3) **Replacement Location.** Affordable Replacement Units will be located on-site.
- (4) **Timing.** On-site Affordable Replacement Units will be made available for occupation at the same time as market-rate Residential Units in the project are available.
- (5) **Replacement Unit fees for Affordable Replacement Units in Single Family Dwellings and Duplexes.** A Replacement Unit fee for Affordable Replacement Units is only applicable when Affordable Existing Units are located in single family dwellings or a duplex located on a site containing no more than two residential units, and it is determined by HCIDLA that locating the Affordable Replacement Units on-site is not feasible.
- (i) Detached bungalows and detached duplexes will be considered unified developments for the purposes of this section and will not be eligible for Replacement Unit Fees.
 - (ii) Claims that it is not feasible to provide required Affordable Replacement Units on-site may be made on appeal to the appellate body. The appellate body may consider reducing the number of required on-site Affordable Replacement Units if it can be shown, pursuant to the provisions of Subdivision 7 of this Subsection H, that one or more of the required affordable units is not feasible.

- (iii) The appellate body will require the maximum feasible number of Affordable Replacement Units to be provided on-site. Remaining Affordable Replacement Unit obligations will be satisfied by paying a fee equivalent to the median sales price of comparable market-rate units in the Coastal Zone Community in which the Project is located, as determined by a regularly published reputable source identified in the Mello Act Implementing Guidelines. If no comparable data is available, HCIDLA will commission a study, at the expense of the applicant, to determine the appropriate value. This fee will be placed in the Coastal Zone Affordable Housing Trust Fund, must be spent within the same Coastal Zone Community as the initiating project, and may only be spent on the creation of net new units of the size and affordability levels otherwise required of the initiating project.
- (6) **Maintaining Density.** HCIDLA will review and determine the total number of residential units, both affordable and market rate, that currently exist at the location of the proposed project. In the interests of maintaining existing density levels and existing housing stock levels, the Applicant will be required to maintain this level of density, or more, in its proposed project.
- (7) **Right to Return.** HCIDLA will maintain a contact list of all Extremely Low, Very Low, Low, and Moderate Income tenants who will be displaced as a result of the proposed demolition or conversion so that such tenants can exercise a First Right To Return to the Affordable Replacement Units that are required pursuant to these regulations. Impacted tenants and building occupants will be notified of their rights by HCIDLA and will be advised to provide HCIDLA with updated contact information if they move.
- (c) **New Housing Developments.** Projects resulting in New Housing Developments will reserve a percentage of the total units as Inclusionary Residential Units to be provided on-site. The Director of City Planning has the responsibility for determining the number of required Inclusionary Residential Units to be provided by the project. The Director has the authority to specify the processes Applicants must follow in order to make determinations pursuant to this Paragraph (c).
 - (1) A project's requirement to provide Inclusionary Residential Units will be fulfilled through providing:
 - (i) A minimum of 8 percent of the proposed Residential Units reserved on-site for Extremely Low Income Households; or
 - (ii) A minimum 10 percent of the proposed Residential Units reserved on-site for Very Low Income Households.
 - (iii) A minimum of 20 percent of the proposed Residential Units reserved on-site for Low Income Households; or
 - (2) **Location.** Inclusionary Residential Units will be located on-site.

- (3) **Timing.** On-site Inclusionary Residential Units will be made available for occupation at the same time as market-rate Residential Units in the project are available.
- (4) The number of required Inclusionary Residential Units is based on a percentage of the net new Residential Units proposed, not including any required Affordable Replacement Units or other restricted Residential Units also required to be provided on-site.
- (5) **Fractional Inclusionary Residential Units.** A fractional Inclusionary Residential Unit of 0.5 or more will be rounded up to the next whole unit and will be provided on-site. If a project results in a fractional Inclusionary Residential Unit of less than 0.5, a proportional partial unit fee will be required to be paid for that fractional unit.

Example 1: 4 new Residential Units should provide 0.4 Very Low Income Inclusionary Residential Units; this project would not require any Inclusionary Units to be provided on-site, but a fractional 0.4 unit provided through a proportional fee payment.

Example 2: 5 new Residential Units should provide 0.5 Very Low Income Inclusionary Residential Units; the fractional 0.5 unit would be rounded up to the next whole unit, thus requiring one Inclusionary Residential Unit to be provided on-site.

Example 3: 12 new Residential Units should provide 1.2 Very Low Income Inclusionary Residential Units; this project would require one Inclusionary Unit be provided on-site, with the fractional 0.2 unit provided through a proportional fee payment.

Example 4: 37 new Residential Units should provide 3.7 Very Low Income Inclusionary Residential Units; this project would require three Inclusionary Units to be provided on-site, with the fractional 0.7 unit being rounded up to the next whole unit, thus requiring an additional, or fourth Inclusionary Residential Unit to be provided on-site.

HCIDLA will be responsible for collecting such fees prior to the issuance of any permits for the development.

- (i) The fractional Inclusionary Residential Unit fee will be calculated by the average square-footage of all dwelling units proposed within the new development, multiplied by the following per square-foot fee for the type of proposed development:
 - a. Single-Family Detached: \$48.63/square-foot
 - b. Single-Family Attached: \$42.36/square-foot
 - c. Multi-Family Rental: \$73.88/square-foot
 - d. Multi-Family Condominium: \$64.30/square-foot
- (ii) HCIDLA will adjust these fees annually, starting with a base year of 2016, utilizing changes in construction costs as measured by a regularly published industry Construction Cost Index and in

land costs as measured by the change in median condominium sales prices. Construction cost percentage change will be weighted at 70% and land costs will be weighted at 30%. The annually updated fees will be published in the Mello Act Implementing Guidelines.

- (iii) All fractional Inclusionary Residential Unit fees collected will be deposited in the City's Coastal Zone Affordable Housing Trust Fund for the Coastal Zone Community in which the project is located. These fees will be spent only on the creation of net, new units, created through adaptive re-use or new construction. The units will be located in the same Coastal Zone Community as the originating project and they will be targeted to Very Low Income Households.
- (6) Providing Residential Units for seniors, disabled, or veteran persons who do not have an Extremely Low, Very Low, or Low Income does not fulfill the Inclusionary Residential Unit requirements for New Housing Development. Moreover, developers cannot satisfy the requirements of this section by setting aside affordable units exclusively for seniors, disabled, or veterans. The Inclusionary Residential Units must be made available to all income qualifying applicants.
- (7) All Inclusionary Residential Units will be provided pursuant Paragraph (g) of this Subdivision 3. The terms of the Affordable Housing Provision Plan (AHPP) are not appealable and no other City Department may modify the terms and requirements of the AHPP once approved.
- (d) **Mixed-Use Development.** Residential Units in an existing or proposed mixed-use building or mixed-use Unified Development are subject to Mello Act compliance. A proposed mixed-use development may not result in a net reduction in the total number of Residential Units unless a residential use is no longer feasible, as defined by Paragraph (a) or of this Subdivision 3.
- (e) **Serial Development.** Projects that are found to have been conducted in a serial fashion by the Department of Building and Safety will be considered as having been undertaken separately for the purposes of avoiding or lessening the appropriate Mello Act compliance review. As such, the Serial Development projects will be analyzed together as a single project for the purpose of Mello Act compliance review. The analysis may result in the requirement of Affordable Replacement or Inclusionary Residential Units previously not required in prior project approvals. Previously issued HCIDLA analysis for components of the Serial Development are not appealable.
- (f) **Affordable Housing Incentives.** Affordable Replacement Units and Inclusionary Residential Units required to be provided through Mello Act compliance review may be counted toward a project's overall provision of affordable dwellings when taking advantage of affordable housing development incentives.
- (g) **Affordable Housing Provision Plan.** All projects required to provide Affordable Replacement Units and/or Inclusionary Residential Units will prepare an Affordable Housing Provision Plan (AHPP) specifying where, when, and how the required affordable dwelling units will be provided. The applicant will submit the AHPP along with fee payment for review and approval by HCIDLA prior to the issuance of any demolition, use of land, or building permit or certificate of occupancy.

- (1) Required Affordable Residential Units (Replacement and Inclusionary Units) will be provided as net new units, through new construction or adaptive reuse of an existing non-residential structure.
- (2) A description of the required Affordable Units must be provided, including the number and type of bedrooms, bathrooms, minimum square-footage, and parking.
- (3) **Performance Standards.** A description of how the following Performance Standards for required Affordable Replacement and Inclusionary Residential Units will be complied with is required to be submitted as part of the AHPP. Developments will also comply with all of the applicable sections of the approved Affordable Housing Incentive Guidelines.
 - (i) Project Design.
 - a. Restricted dwelling units will be comparable in every manner to market-rate units, except in the quality of interior "finish" materials. The restricted unit(s) will be comparable in total square footage, number of bedrooms, bedroom size, number of bathrooms, closet space, amenities, etc. If the project proposes more than one type of unit, the restricted dwelling unit(s) will not be confined to only one type of unit within the development.
 - b. Affordable Replacement Units. Restricted dwelling units will contain at least the same number of bedrooms as the Affordable Existing Units they are replacing.
 - c. Inclusionary Residential Units. The design of the restricted unit(s) should generally reflect the average number of bedrooms and bathrooms per dwelling unit in the development and should proportionally reflect the mix of unit types in the development.
 - d. Restricted units must be interspersed among market-rate dwelling units within the same building. They may not be grouped together on one level or in one or more "less desirable" sections of the building. In multiple building developments, restricted dwelling units must be reasonably dispersed among the buildings.
 - (ii) Equal Distribution of Amenities.
 - a. Residents of restricted dwelling units may not be charged for amenities that are provided at no cost to other residents including, but not limited to, access to recreational facilities, parking, cable TV, and interior amenities such as dishwashers and microwave ovens.
 - b. Optional services provided must be an option for all residents, and available to all under the same terms and conditions.

- c. All incentives (e.g. one month free rent specials) must be offered to all new residents, not only residents of market-rate dwelling units.
 - (iii) A description of the financing, construction plan, and project timetable for the provision of required Affordable Residential Units will be provided to ensure accountability and compliance with the Timing requirements for the required Affordable Residential Units.
- (4) **Enforcement and Monitoring.**
- (i) **Covenant and Agreement.** A covenant and agreement guaranteeing that: 1) affordability criteria will be observed for a minimum of 55 years from the issuance of the Certificate of Occupancy; and 2) compliance with the City's annual housing and occupancy monitoring requirements as set forth in these regulations, Mello Act Implementing Guidelines, and the Affordable Housing Incentive Guidelines, will be recorded with the County Recorder's Office after HCIDLA approval of the Affordable Housing Provision Plan. Prior to recordation of the covenant and agreement, the applicant will submit a fee payment receipt for the preparation of a covenant and agreement and covenant monitoring, pursuant to Section 19.14 of the Los Angeles Municipal Code, to HCIDLA.
 - (ii) **Financial Assurances.** HCIDLA, or any successor department or agency, may require that the project proponent post a bond or make other financial assurances to assure compliance with the approved AHPP. If a bond or other financial assurance is required, such will be made prior to final approval of the AHPP.
 - (iii) It is the responsibility of the property owner to notify HCIDLA of any changes in the building that may affect compliance, such as change of ownership, management agent or on-site manager, vacancies in restricted dwelling units, or changes in compliance with the performance standards approved by HCIDLA.
 - a. HCIDLA must complete initial reviews of new tenant eligibility for restricted dwelling units prior to occupancy.
 - b. HCIDLA will provide tenants with information upon initial lease up and on an annual basis regarding the Mello Act and its Replacement and Inclusionary obligations. This will assist the city with obtaining tenant income information for affordable units and it will help protect restricted units from abuse.
 - c. HCIDLA must annually review tenant's eligibility for restricted dwelling units.
 - d. HCIDLA must receive an annual review letter from the owner about the number of restricted dwelling units, household income and size, rent levels, dwelling unit size, and verification of vacancies. HCIDLA may at any

time audit the building occupancy to monitor restricted dwelling units.

- e. HCIDLA may make annual site visits to ensure that the restricted dwelling units are maintained in decent, safe and sanitary condition and that they are provided with the same level of services, including security and maintenance, as are applied to the other dwelling units in the development.
- (iv) Violations of the regulatory agreement will be levied against the building owner for non-compliance including legal proceedings. It is the responsibility of the owner to adhere to all program requirements.
- (v) HCIDLA will conduct annual monitoring of all Affordable Replacement Units and Inclusionary Residential Units to ensure that they continue to be available at an Affordable Monthly Housing Cost and occupied by Extremely Low, Very Low, Low, and Moderate Income Households. The City's monitoring procedures may include a requirement that owners of Affordable Replacement Units and Inclusionary Residential Units submit tenant income information to the City that has been verified by third party sources, and that meets the same standards for income verification as specified in the Mello Act Implementing Guidelines for this Subsection.
- (5) Tenants, rental applicants, purchasers, and prospective purchasers of required Affordable Residential Units will have the right to seek an injunction to enforce the affordability criteria or to raise the affordability criteria as a defense or counterclaim to a claim for rent or possession directly against the owner, manager, and/or their successors in interest, of those units.

4. Exceptions.

- (a) **Public Nuisance.** A Residential Unit or structure declared a public nuisance pursuant to Division 13 (commencing with Section 17000) of the California Health and Safety Code or Chapter IX, Article 1, Division 89 of the Los Angeles Municipal Code is not subject to the Affordable Replacement Unit requirements of this Subsection H. In order to qualify for this exception, the following must be taken into consideration:
 - (1) A certified title report indicating that a public nuisance declaration has been recorded against the residential unit or structure and has not been terminated.
 - (2) No building that conforms to the standards that were applicable at the time the building was constructed and that does not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Los Angeles Building Code for new construction.
- (b) **Owner-Occupied Dwelling.** The demolition of an existing Residential Unit, that is owned and occupied by a natural person who is the current property owner of

record for at least one year prior to the date of the filing of Mello Act Compliance Review, and is maintained as the property owner's primary residence for a minimum of one year from the date a certificate of occupancy is issued for the project, is not subject to the provisions for providing an Affordable Replacement Unit for their one dwelling unit. A dwelling owned through a legal entity such as, but not limited to, a Limited Liability Corporation or Corporation does not qualify for this exception. Properties held in Trusts may qualify for this exception, so long as the applicant can prove that they are both a Trustee to the property held in the Trust and have maintained primary residency within the unit for the one year prior to the filing of the Mello Act Compliance Review.

5. **Mello Act Compliance Review.** Prior to the issuance of any permit or authorization for a Project, whether discretionary or non-discretionary, a Mello Act Compliance Review determination will be issued by the Department of City Planning.

(a) **Initiation.** The applicant will file an application with the Department of City Planning, along with a fee payment pursuant to Section 19.06, for a Mello Act Compliance Review determination. If the proposed Project requires additional entitlements, the fee for a Mello Act Compliance Review determination will not be discounted.

(b) **Notice of Public Hearing.** The following notice is required for public hearing on appeal:

Type of Notice	When	Where / To Whom / Additional Requirements
Mail	21 days	<ul style="list-style-type: none"> • The applicant; • The owner(s) of the property involved; • All tenants and units in the property at issue; • Owners of properties within 100 feet of the exterior boundaries of the property involved; • The Councilmember(s) having jurisdiction over the specific plan area in which the property is located; • The Department of Neighborhood Empowerment; and • Other parties who have requested notice in writing.
Email	21 days	<ul style="list-style-type: none"> • Other parties as may be indicated in HCIDLA's Mello Act Implementing Guidelines for public hearing notifications.

(c) **Decision.**

(1) **Decision Maker.** The Director of City Planning is the initial decision maker and may approve, conditionally approve, or deny the Mello Act Compliance Review.

(2) **Decision.** The Director will make a written determination within 75 days of the application having been deemed complete; a complete application includes having received the HCIDLA Mello Act Determination, and after an appropriate environmental review clearance has been completed for the project. This time limit may be extended by mutual consent of the Director and the Applicant.

(d) **Standards for Review and Required Findings.** The Director will grant a Mello Act Compliance Review upon written findings that the project complies with the provisions of Subdivision 3, and incorporate the following into the review determination:

- (1) The total number of existing dwelling units on the subject property;
- (2) The total number of Affordable Existing Units as determined by HCIDLA;
- (3) The total number of identified Affordable Existing Units proposed for demolition or conversion;
- (4) The total number of Affordable Replacement Units required to be provided, as determined by HCIDLA;
- (5) The total number of Inclusionary Residential Units required to be provided, as determined by the Director;
- (6) The total amount of fractional Inclusionary Residential Unit fees authorized to be paid; and
- (7) Any exceptions for which the Project qualifies.

(e) **Scope of Decision.**

- (1) The Director will issue a written Mello Act Compliance Review determination for all Coastal Zone Projects resulting in the Demolition or Conversion of Residential Units, the development of any new Residential Units, or the subdivision of land for residential purposes.
- (2) The Director will determine whether a proposed project qualifies for an exception pursuant to Subdivision 4 of this Subsection H; if applicable, the applicant will also be referred to HCIDLA to obtain an HCIDLA Mello Act Determination.
- (3) The Director will determine if Existing Residential Units proposed for Conversion or Demolition to a Non-Residential, Non-Coastal Dependent Use remain feasible pursuant to Paragraph (a) of Subdivision 3.
- (4) The Director will incorporate HCIDLA's Mello Act Determination and will not modify HCIDLA's conclusions. The Director is not authorized to modify the quantity or quality of Replacement Affordable Units to be provided by the applicant, as identified in HCIDLA's Mello Act Determination.
- (5) All completed forms and supporting documentation, including those from HCIDLA, will be attached to the file containing the Mello Act Compliance Review determination.
- (6) The Director will determine the number of Inclusionary Residential Units and the amount of Fractional Inclusionary Unit fee payment to be required as part of the proposed project.

- (7) **Limitations.** Granting of a Mello Act Compliance Review will not imply compliance with any other applicable provisions of the Los Angeles Municipal Code.
- (8) **Conditions.** The Director will incorporate, as conditions of approval and as appropriate, the provision of required on-site Affordable Replacement Units, payment of Replacement Unit fees, Inclusionary Residential Units, payment of any fractional Inclusionary Residential Unit fees, and a requirement that an Affordable Housing Provision Plan be approved by HCIDLA prior to the Department of City Planning sign-off of any permit, if necessary.
- (9) **Transmittal.** The Director will transmit by mail a copy of the written findings and decision to the applicant; property owner; all owners of properties abutting, across the street for alley front, or having a common corner with the property; all tenants and occupants of the involved property; the Department of Building and Safety; the Los Angeles Housing and Community Investment Department; the Councilmember(s) having jurisdiction over the area in which the property is located; the Department of Neighborhood Empowerment; other parties as may be indicated in the Mello Act Implementing Guidelines for notifications; and other parties who have requested in writing a copy of the determination.
- (f) **Appeals.** Except as required below, the appeals process and procedures for Mello Act Compliance Review determinations will be as indicated in Section 11.5.7.C.6 or Section 12.36 for projects requiring multiple approvals.
 - (1) **Filing.** An Applicant or any other person aggrieved by the Director's decision may file an appeal.
 - (2) **Appellate Decision.**
 - (i) Before acting on any appeal the Area Planning Commission will set the matter for hearing, giving notice in the manner specified in paragraph (b) of this Subdivision 5.
 - (ii) The Area Planning Commission will act within 75 days after the expiration of the appeal period.
 - (iii) The appeal action must contain the same findings required to be made by the Director, supported by facts in the record.
 - (iv) The Area Planning Commission may sustain, reverse, or modify, in whole or in part, the decision of the Director.
 - (v) The Area Planning Commission must rely upon and follow the recommendations of the HCIDLA-approved Feasibility Study, if any.
 - (vi) **Effective Date for Appellate Decision.** The appellate decision of the Area Planning Commission will be final and effective as provided in Charter Section 245.
- (g) **Modification of Entitlement.** The terms of a final determination pursuant to this Subsection H cannot be subsequently modified except through the refiling of a new request for a Mello Act Compliance Review determination.

- (h) **Term of Decision.** A determination issued pursuant to this subdivision will be effective pursuant to Section 12.25 of this Code.

6. **HCIDLA Mello Act Determination.** The Los Angeles Housing and Community Investment Department (HCIDLA) will determine whether existing Residential Units are Affordable Existing Residential Units, the number of Affordable Existing Residential Units, the level of affordability for each identified Affordable Existing Residential Unit, and the number of bedrooms in each Affordable Existing Residential Unit. HCIDLA determinations regarding Affordable Existing Residential Units shall run with the land and shall not expire.

- (a) Application for an HCIDLA Mello Act Determination will occur as early as possible, whether at the time of the an initial application with the Department of City Planning, a "cash-for-keys" agreement, or Ellis Act action, whichever comes first. HCIDLA will direct applicants to file an application for a Department of City Planning Mello Act Compliance Review prior to further processing of any HCIDLA review.

- (1) The applicant will work cooperatively with HCIDLA to provide the information necessary to assess the affordability of all Residential Units on the project site. All information provided by the applicant will be provided under penalty of perjury.
- (2) The applicant will submit a description of the project, describing which, if any, of the existing Residential Units will be demolished, converted, or affected by the proposed project.
- (3) The applicant will submit a list of all adult individuals listed on a rental or lease agreement, or occupying each unit if there is no written rental or lease agreement, for all the Residential Units on the project site, for the 5 years immediately preceding the determination, beginning on the earliest date of the Mello Act compliance review application filing or the filing of some other related entitlement action necessary to carry out the project. This list will indicate the address at which the tenant resided, the 5-year rental rate history for that unit, and contact information for that tenant, including a forwarding address, email and telephone number if that tenant no longer resides there.
- (4) If a Residential Unit is being claimed as having been vacant, the applicant will submit copies of power and water utility bills for each billing period during which the Residential Unit was vacant for the 5 year review period.
- (5) HCIDLA may request further or additional documentation to assess the existence of an Affordable Existing Residential Unit.
- (6) Affordable Existing Residential Units include all existing Residential Units proposed for conversion or demolition that:
 - (i) Are currently occupied by, or were occupied within the last 5 years, by an Extremely Low, Very Low, Low, or Moderate Income household or person;
 - (ii) Currently have or had an Affordable Monthly Housing Cost for any period of time within the last 5 years;

- (iii) Are currently subject to, or previously subject to, the City's Rent Stabilization Ordinance within the last 5 years; or
 - (iv) Are currently subject to an existing affordable housing covenant or previously subject to an affordable housing covenant within the last 5 years.
 - (7) Existing Residential Units will be presumed to be Affordable Existing Residential Units if the owner cannot provide Substantial Credible Evidence that Subparagraph (6) of this Paragraph is not applicable. Self-certification by an owner will not constitute Substantial Credible Evidence.
 - (8) In the event that an existing Residential Unit is occupied by more than one person or family, and if at least one such person or family (excluding any dependents) is of Extremely-Low, Very Low, Low, or Moderate Income, then the existing Residential Unit is defined as an Affordable Existing Residential Unit.
- (b) **Notice.** Prior to evaluation, HCIDLA will notify all current building occupants, as well as prior occupants from the last 5 years, if known, that an HCIDLA Mello Act Determination will be conducted to determine whether there are any Affordable Existing Residential Units that must be replaced by the developer. The notice will be provided in English and the predominant non-English language of the area and will contain, at a minimum, the following information:
 - (1) A description of the proposed Demolition or Conversion;
 - (2) An explanation of the purposes of the Mello Act and the City's review process;
 - (3) A description of the rights that tenants occupying an Affordable Existing Residential Unit have, including a first right to return to Affordable Replacement Units required by these regulations; and
 - (4) A City telephone number to call for additional assistance.
- (c) **Determination.** HCIDLA will transmit the Mello Act Determination, containing the following information, to the Director of City Planning:
 - (1) A summary of the proposed project;
 - (2) The total number of existing Residential Units;
 - (3) The number of Affordable Existing Residential Units;
 - (4) The level of affordability for each affected Affordable Existing Residential Unit and the number of bedrooms in those units;
 - (6) The number of Affordable Replacement Units, including their affordability levels and number of bedrooms, required as a result of the proposed project;
 - (7) The total number of Residential Units that should be maintained, at a minimum, at the project site; and

- (5) Additional conditions, if any, to ensure compliance with the HCIDLA affordability determination.
 - (d) **Standard for Review.** Pursuant to Subdivision 3 of this Subsection, HCIDLA will evaluate and determine the number of existing Residential Units on the property affected by the proposed project and the level of household affordability for each affected unit (Extremely Low, Very Low, Low, Moderate, or market-rate).
 - (1) When evaluating an existing Residential Unit to determine its level of affordability, HCIDLA will first consider the Household Income for each tenant or household occupying the unit, and if there is insufficient information available from the reported Household Income, HCIDLA will then examine the rental rate history of unit.
 - (2) If the applicant has submitted Substantial Credible Evidence to show that the Residential Unit has exceeded maximum criteria for Moderate Income Household affordability over the 5-year review period, the unit will be deemed market-rate.
 - (e) **Limitations.** Issuance of an HCIDLA Mello Act Determination does not constitute a Mello Act Compliance Review, and will not imply compliance with any other applicable provisions of the Los Angeles Municipal Code.
 - (f) **Transmittal.** A written copy of the HCIDLA Mello Act Determination will be sent to the Director of Planning; a copy will be electronically transmitted to other parties as indicated in the Mello Act Implementing Guidelines to receive HCIDLA Mello Act Determinations, and to those interested parties who have requested in writing to receive a copy.
 - (g) **Modification.** HCIDLA's determination made pursuant to this Subdivision will not expire or be modified unless new evidence is presented to HCIDLA that would result in a change in the number of Affordable Replacement Units and/or a change in affordability for identified Affordable Replacement Units.
7. **Feasibility Study.** The Los Angeles Housing and Community Investment Department (HCIDLA) will be responsible for the review of Feasibility Studies.
- (a) An applicant claiming infeasibility is responsible for paying a fee to HCIDLA. HCIDLA will use this fee to hire a consultant, from an approved list of neutral third party consultants, to undertake a feasibility study. This feasibility study will utilize the methodologies, thresholds and indexes laid out in Subdivision 8 of this Subsection H and the Mello Act Implementing Guidelines. HCIDLA will review the completed study and make a determination regarding the maximum number of Replacement and Inclusionary Residential Units the project can accommodate based on the study. Applicants may not submit their own feasibility studies for consideration.
 - (b) A Feasibility Study will only be considered during an appeal of an issued Mello Act Compliance Review, and only under the following two circumstances:
 - (1) Replacement of Affordable Existing Units that are located in a single family dwelling or an attached duplex, located on a site containing no more than two residential units. Detached bungalows and detached duplexes will be considered unified developments for the purposes of this Subdivision and will not be eligible for findings of infeasibility.

- (2) Reduction in the number of Inclusionary Units because the Applicant alleges that full compliance is not feasible. Applicants cannot pay in lieu fees for whole units nor may they seek to construct Inclusionary Units off-site. If an applicant claims that it is not feasible to comply with the Inclusionary Residential Unit obligations of Paragraph (c) of Subdivision 3, the Applicant may only request a reduction in the number of required Inclusionary Units.
 - (c) HCIDLA will transmit to the Director of Planning a copy of the Feasibility Study and HCIDLA's determination as to the maximum number of required Affordable Replacement Units and/or Inclusionary Residential Units that can be feasibly provided on-site. Should there be any Replacement Residential Unit fees or fractional Inclusionary Residential unit fees, those will be included in HCIDLA's determination as well.
8. **Feasibility Study Methodology.** The following methodology will be utilized for the purposes of determining a project's feasibility of providing Affordable Replacement Units (only for Affordable Existing Units in single family dwellings or duplexes) and Inclusionary Residential Units.
 - (a) Reputable published data sources for the following will be identified and included in the Mello Act Implementing Guidelines: construction cost, Class A apartment building operating cost, median monthly rental rate, home and condominium sale prices, and going-in cap rate.
 - (b) Assumptions Regarding Feasibility:
 - (1) Construction costs should be no more than the per square-foot construction cost compiled and published by a reputable construction cost estimator, in accordance with the relevant building typologies, as adjusted for the Los Angeles location within the last 12 months.
 - (2) Soft development costs, including but not limited to permits and fees, architecture and engineering, financing fees and interest carry, and developer fee, should not exceed 25 percent of the construction costs.
 - (3) Land cost should be the actual purchase price for the property bought within three years from the time of the feasibility study being conducted, as reflected in the purchase contract. For earlier land purchases, the land cost value should be determined by a reputable, professional land appraiser commissioned by HCIDLA, at the expense of the applicant.
 - (c) Feasibility of Residential Units for Rent or Lease.
 - (1) Feasibility will be determined by yield-on-cost: annual net operating income divided by total development cost.
 - (2) The threshold for determining feasibility will be the going-in cap rate percentage index for new apartments in the Los Angeles region, as published in the most recent issue of a regularly published reputable real estate industry report.
 - (3) If a project meets or exceeds the going-in cap rate, including required Affordable Units, providing the Affordable Residential Unit(s) is/are feasible.

- (4) Operating expenses should not be more than the expense data collected and regularly published within a reputable residential income property industry report for the Los Angeles area within the last 12 months.
 - (5) Rental income should not be less than rental data collected and produced by reputable real estate data collection and analysis firm for buildings less than 5 years old, within one quarter mile of the project site, and within the last 12 months. If no comparable data is available, data for buildings with an age greater than 5 years may be utilized.
 - (d) Feasibility of Residential Units for Sale.
 - (1) Feasibility will be determined by return-on-cost, which is measured as follows: profit divided by total development cost.
 - (2) Sales costs should not exceed five percent of gross sales proceeds.
 - (3) The threshold for determining feasibility will be determined annually by HCIDLA, who will make the threshold publically available.
 - (i) HCIDLA will utilize a consultant to determine the annual threshold for feasibility.
 - (ii) The consultant will survey a minimum of five reputable for-sale developers and/or real estate analytical firms active in the Los Angeles area to assist in determining the annual threshold for feasibility.
 - (4) Sales revenue should be not less than the sales data for buildings less than 5 years old, within one-quarter mile of the project site, and within the last 12 months. If no comparable data is available, data for buildings with an age greater than 5 years may be utilized.
 - (e) Mixed Use projects (containing residential and non-residential uses) will be evaluated by deducting the portions of costs and revenues for the non-residential uses so that only the residential portion of the project is considered in the feasibility analysis; the remainder of the analysis will be pursuant to Paragraphs (c) or (d) of this Subdivision, as appropriate.
 - (f) HCIDLA retains discretion to accept, modify, or reject applicant assumptions that differ from the above assumptions in evaluating feasibility.
 - (g) If no appropriate and comparable data is available from an appropriate data source, HCIDLA will commission, at the applicant's expense, a survey and/or analysis to acquire and assess the necessary data.
9. **Relief.** No administrative, ministerial or additional discretionary action may be taken to relax, deviate, or relieve an applicant from compliance with the provisions of this Subsection H, except as otherwise stated herein.
10. **Mello Act Implementing Guidelines.** The Los Angeles Housing and Community Investment Department (HCIDLA) will develop and maintain implementing guidelines for these regulations within 6 months of the effective date of these regulations. The guidelines will be approved by the General Manager of the Los Angeles Housing and Community Investment Department and the Director of the Department of City Planning.

The guidelines will be publically available and will include specific, impartial data sources consistent with these regulations and necessary for making feasibility determinations. The guidelines will be updated annually and contain annually adjusted fee amounts. HCIDLA will be authorized to modify the guidelines from time-to-time to account for changes in available data sources.

11. **Mello Act Annual Report.** The City will prepare and annually release to the public a report containing, at a minimum, the following information for the preceding year, organized by Extremely Low, Very Low, Low, and Moderate Income:
 - a. The number of new Residential Units for which the City issued building permits in the Coastal Zone (City Planning);
 - b. The number of Inclusionary Residential Units that the City required to be provided, the affordability levels for these units and the location of these units (City Planning);
 - c. The number of new Inclusionary Residential Units for which construction was completed (City Planning);
 - d. The number, location, and affordability levels of Affordable Existing Residential Units approved for Demolition or Conversion (City Planning);
 - e. The number, location, and affordability levels of Affordable Replacement Units that the City required to be provided (City Planning);
 - f. The number and location of Affordable Replacement Units for which construction was completed (City Planning);
 - g. The amount of Inclusionary Residential Unit fees collected in the last year (HCIDLA);
 - h. Information about the expenditure of any partial unit fees, including how they were spent, where they were spent, how many units were created, and at what affordability levels (HCIDLA).
12. **Notice Required.** The City will provide Notice to Legal Aid Foundation of Los Angeles and Western Center on Law and Poverty, until two years after these regulations are adopted, as follows:
 - (a) Notice will be given no less than 24 days prior to:
 - i. Any proposed change in any City Policies, City Procedures or guidelines regarding the Mello Act;
 - ii. Any submission of any Local Coastal Plan or any land use portion of a Local Coastal Program to the Coastal Commission for approval, pursuant to Public Resources Code Section 30512.
 - (b) Notice will be given within 15 days of any changes to the maps defining or describing the Coastal Zone, or the description of such boundaries.
 - (c) Notice will be sent within five days of the release of the Mello Act Annual Report.
13. **Definitions.**

Affordable Housing Incentives Guidelines. The guidelines adopted by the City Planning Commission on December 14, 1995, as amended, pursuant to Ordinance No. 170,764, that implement California Government Code Section 65915 in the City of Los Angeles.

Affordable Monthly Housing Cost. For ownership units, the definition contained in Health and Safety Code Section 50052.5, and as further defined in California Code of Regulations title 25 Section 6920. For rental units, the definition contained in Health and Safety Code Section 50053, and as further defined in California Code of Regulations Title 25 Section 6918.

Affordable Replacement Unit. A Residential Unit built or provided to satisfy replacement requirements, at the same or lower affordability level.

Coastal-Dependent Non-Residential Use. Any non-residential development or use that requires a site on, or adjacent to, the sea to be able to function at all.

Coastal-Related Non-Residential Use. Any non-residential development or use that is dependent on a Coastal-Dependent Non-Residential Use.

Coastal Zone. The Coastal Zone, as defined in California Public Resources Code, Division 20 (commencing with Section 30000). In the case of any discrepancy, the Public Resources Code shall control.

Coastal Zone Affordable Housing Trust Fund. The reserve accounts kept separate from the General Fund into which Replacement Residential Unit and fractional Inclusionary Residential Unit fees received from Applicants will be deposited, and that will only be used to provide Affordable Replacement Units and Inclusionary Residential Units in the same Coastal Zone Community from where the fee originated. Replacement Residential Units and fractional Inclusionary Residential Unit fees may only be spent to create net new units through adaptive reuse and new construction.

Coastal Zone Community. Those portions of the Brentwood-Pacific Palisades, Venice, Palms-Mar Vista-Del Rey, Westchester-Playa del Rey, San Pedro, and Wilmington-Harbor City Community Plan areas that are located within the Coastal Zone. These Coastal Zone areas are aggregated into the following Communities: Pacific Palisades (comprised of the Brentwood-Pacific Palisades Coastal Zone areas); Venice (comprised of the Venice, Palms-Mar Vista-Del Rey, and Westchester-Playa del Rey Coastal Zone areas); San Pedro (comprised of the San Pedro Coastal Zone areas), and Wilmington (comprised of the Wilmington-Harbor City Coastal Zone areas).

Conversion. A change of one or more existing Residential Units to a condominium, cooperative, or similar form of ownership; or a change of one or more existing Residential Units to a non-residential use; or a reduction in the existing number of Residential Units, either affordable or market rate. The structure or structures that contain these Residential Units are located either on a single lot or two or more contiguous or tied lots; or conform to the definition of a Unified Development or Serial Development.

Demolition. Demolition of one or more existing Residential Units includes substantial rehabilitation work, which is defined as work that exceeds \$40,000 per unit in construction costs and the replacement of two or more systems. The structure or structures containing these Residential Units are located on a single lot, two or more contiguous lots, or conform to the definition of a Unified Development. The per unit construction cost will be adjusted annually by the Los Angeles Housing and Community Investment Department utilizing changes in construction costs as measured by a

regularly published industry Construction Cost Index starting with a base year of 2017. Systems are defined as items including, but not limited to, water/natural gas supply lines, drain lines, electrical systems, HVAC and windows. Demolition also includes work that will result in the temporary or permanent displacement of any of the residents of the unit.

HCIDLA Mello Act Determination. An Affordable Existing Residential Unit determination made by the Los Angeles Housing and Community Investment Department.

Household, Extremely Low Income. A person or household with an income that conforms to the definition contained in California Health and Safety Code Section 50106, and as further defined in 25 California Code of Regulations 6928 and 6932.

Household, Low Income. A person or household with an income that conforms to the definition contained in California Health and Safety Code Section 50079.5 and as further defined in 25 California Code of Regulations 6928 and 6932.

Household, Moderate Income. A person or household with an income that conforms to the definition contained in California Health and Safety Code Section 50093 (b), and as further defined in 25 California Code of Regulations 6930 and 6932.

Household, Very Low Income. A person or household with an income that conforms to the definition contained in California Health and Safety Code Section 50105, and as further defined in 25 California Code of Regulations 6926 and 6932.

New Housing Development. Development of one or more Residential Units, for rent or sale, through either construction of new units, additions to existing structures, or the adaptive reuse of existing, non-residential structures for Residential Units. The structure or structures containing these Residential Units are located on a single lot, two or more contiguous or tied lots, or conform to the definition of a Unified Development.

Project. Within the Coastal Zone, any action for which a permit, authorization, or determination is required to be issued, resulting in the Conversion, Demolition, or reduction of the number of existing Residential Units; and/or the construction of new dwelling units.

Residential Unit. A dwelling unit, efficiency dwelling unit, accessory dwelling unit, junior accessory dwelling unit, or joint living and work quarters as defined in Section 12.03 of the Los Angeles Municipal Code; a mobile home, as defined in Section 18008 of the California Health and Safety Code; a mobile home lot in a mobile home park as defined in Section 18214 of the California Health and Safety Code; a residential hotel as defined in paragraph (1) or subdivision (b) of Section 50519 of the California Health and Safety Code; or a non-permitted dwelling unit that is inhabited and utilized as a primary residence.

Residential Unit, Affordable Existing. An existing Residential Unit that: (1) is/was occupied by an Extremely Low, Very Low, Low, or Moderate Income person or household within the last 5 years; or (2) has had an Affordable Monthly Housing Cost for any period of time within the last 5 years; or (3) is presently, or was subject to, the City's Rent Stabilization Ordinance within the last 5 years; or (4) is subject to an existing affordable housing covenant or was subject to an affordable housing covenant within the last 5 years. All Residential Units are presumed to be Affordable Existing Residential Units unless Substantial Credible Evidence that (1)-(4), above, are not applicable.

In the event that an existing Residential Unit is occupied by more than one person or family, and if at least one such person or family (excluding any dependents) is of

Extremely Low, Very Low, Low or Moderate Income, then the existing Residential Unit is defined as an Affordable Existing Residential Unit.

Residential Unit, Inclusionary. A Residential Unit with an Affordable Monthly Housing Cost required to be provided under this Section as a condition of approval for a New Housing Development.

Serial Development. Development that is undertaken by the same applicant within a 500-foot radius of the subject property and within a 5-year time period, for which a Mello Act compliance review was required in the past and is presently required in conjunction with a proposed project.

Substantial Credible Evidence. Will comprise, but not be limited to: complete rental rate histories spanning a minimum of 5 consecutive years immediately preceding the application filing for a Mello Act Compliance Review, showing rates exceeding Extremely Low, Very Low, Low, and Moderate Income Household affordability; or public utility bills substantiating that the Residential Unit(s) have been vacant for a minimum of 5 consecutive years; or tax bills showing owner occupation of the unit as their primary residence for a minimum of 5 consecutive years immediately preceding the application filing for a Mello Act Compliance Review. Information that is self-certified does not meet this definition. This documentation must be submitted under penalty of perjury; self-certification by owners, whether under penalty of perjury or not, will not meet these requirements.

Unified Development. A development of two or more units, buildings or structures that have functional internal linkages such as shared pedestrian walkways or vehicular connections or parking facilities, with common architectural and landscape features that constitute distinctive design elements of the development, and that appears to be a consolidated whole when viewed from adjoining streets or the public right-of-way. Such development may include two or more contiguous parcels or lots separated only by a street or alley. Detached bungalows and duplexes are considered unified developments.

Section 2. The City Clerk shall certify ...