

## Communication from Public

**Name:** Joe Gatlin

**Date Submitted:** 10/15/2021 04:21 PM

**Council File No:** 15-0129-S1

**Comments for Public Posting:** Dear Members of the Planning Land Use & Management Committee, I write to you as the former President of the Barton Hill Neighborhood Organization. I was involved in this organization at the time of the Settlement Agreement between the City of Los Angeles and The Venice Town Council, Inc., The Barton Hill Neighborhood Organization, and Carol Berman, dated December 5, 2000 (Settlement Agreement). I have become aware that there is currently a provision in the draft Mello Act Ordinance that would allow demolition or conversion of residential structures for purposes of mixed-use projects if the number of units remains the same and replacement affordable and Inclusionary Units are included. But demolition or conversion of residential structures for purposes of mixed-use projects violates both the letter and the spirit of the Mello Act law, and, if approved, this new ordinance will constitute a breach of the Settlement Agreement. The permanent ordinance must be consistent with both the Mello Act and the provisions of the Settlement Agreement. As per the Settlement Agreement: "All future zoning, land use, development and planning regulations, ordinances, resolutions and policies adopted by the City shall be consistent with the Mello Act and this Agreement." In addition, the Settlement Agreement states: "The City may revise and amend City Procedures if the City Council determines that doing so advances the goals of the Mello Act..." The above-mentioned provision is not consistent with the Mello Act and the Settlement Agreement, nor does it advance the goals of the Mello Act. It would result in the City's Mello Act Ordinance being less protective than the Interim Administrative Procedures, which is based on the Settlement Agreement. In addition, as this provision has apparently not been consistently enforced by the city, I demand that the new Mello Act Ordinance include a provision making it explicit that under no circumstances can a residential structure be demolished or converted or changed in any way for purposes of becoming a non-residential use, which includes a mixed-use project, unless it is a coastal dependent use or unless the local government has first determined that a residential use is no longer feasible in that location. In addition, any applicants with projects that would demolish or convert a residential structure for purposes of a mixed-use project should be requested to be

withdraw or modify their project to be 100% residential, or else be denied. Lastly, please be aware that the Settlement Agreement states that the requirement for a Mello Act Compliance Review and determination shall also apply to any Application exempted from the requirement to obtain a coastal development permit. I am aware of violations and ask that you be sure that the new Mello Act Ordinance is very clear on that point and that the City assure compliance. I expect that the City will make these changes forthwith. I thank you very much. Sincerely, Joe Gatlin former President of the Barton Hill Neighborhood Organization

October 15, 2021

VIA ELECTRONIC MAIL

Planning Land Use & Management Committee  
Los Angeles City Council  
200 North Spring Street  
Los Angeles, CA 90012

RE: proposed Mello Act Ordinance  
CPC-2019-7393-CA  
Council File 15-0129-S1

Dear Members of the Planning Land Use & Management Committee,

I write to you as the former President of the Barton Hill Neighborhood Organization. I was involved in this organization at the time of the Settlement Agreement between the City of Los Angeles and The Venice Town Council, Inc., The Barton Hill Neighborhood Organization, and Carol Berman, dated December 5, 2000 (Settlement Agreement).

I have become aware that there is currently a provision in the draft Mello Act Ordinance that would allow demolition or conversion of residential structures for purposes of mixed-use projects if the number of units remains the same and replacement affordable and Inclusionary Units are included. But demolition or conversion of residential structures for purposes of mixed-use projects violates both the letter and the spirit of the Mello Act law, and, **if approved, this new ordinance will constitute a breach of the Settlement Agreement.**

The permanent ordinance must be consistent with both the Mello Act and the provisions of the Settlement Agreement. As per the Settlement Agreement: "All future zoning, land use, development and planning regulations, ordinances, resolutions and policies adopted by the City **shall be consistent with the Mello Act and this Agreement.**" In addition, the Settlement Agreement states: "The City may revise and amend City Procedures **if the City Council determines that doing so advances the goals of the Mello Act...**"

The above-mentioned provision is not consistent with the Mello Act and the Settlement Agreement, nor does it advance the goals of the Mello Act. It would result in the City's Mello Act Ordinance being less protective than the Interim Administrative Procedures, which is based on the Settlement Agreement.

In addition, as this provision has apparently not been consistently enforced by the city, I demand that the new Mello Act Ordinance include a provision making it explicit that under no circumstances can a residential structure be demolished or converted or changed in any way for purposes of becoming a non-residential use, which includes a mixed-use project, unless it is a coastal dependent use or unless the local government has first determined that a residential

use is no longer feasible in that location. In addition, any applicants with projects that would demolish or convert a residential structure for purposes of a mixed-use project should be requested to be withdraw or modify their project to be 100% residential, or else be denied.

Lastly, please be aware that the Settlement Agreement states that the requirement for a Mello Act Compliance Review and determination shall also apply to any Application exempted from the requirement to obtain a coastal development permit. I am aware of violations and ask that you be sure that the new Mello Act Ordinance is very clear on that point and that the City assure compliance.

I expect that the City will make these changes forthwith. I thank you very much.

Sincerely,



Joe Gatlin

former President of the Barton Hill Neighborhood Organization

CC: Vincent Bertoni, L.A. City Planning Director  
Legal Aid Foundation of Los Angeles  
Western Center on Law and Poverty, Inc.  
Venskus and Associates  
California Women's Law Center  
People Organized for Westside Renewal

## Communication from Public

**Name:** Jonathan Jager

**Date Submitted:** 10/15/2021 03:39 PM

**Council File No:** 15-0129-S1

**Comments for Public Posting:** Attached please find comments from the Legal Aid Foundation of Los Angeles regarding the proposed Mello Act ordinance that will be heard by the PLUM Committee on October 19, 2021.

**Legal Aid Foundation of Los Angeles**

South Los Angeles Office  
7000 S. Broadway  
Los Angeles, CA 90003

1-800-399-4529

[www.lafla.org](http://www.lafla.org)



Councilmember Marqueece Harris-Dawson, Chair  
Councilmember Gilbert A. Cedillo  
Councilmember Bob Blumenfield  
Councilmember Mark Ridley-Thomas  
Councilmember John S. Lee

Planning and Land Use Management Committee  
Los Angeles City Council  
200 N. Spring Street  
Los Angeles, CA 20091

October 15, 2021

Re: October 19, 2021 Planning and Land Use Management Committee Meeting  
Agenda Item #11: CPC-2019-7393-CA

Honorable Councilmembers:

The Legal Aid Foundation of Los Angeles submits this comment letter in response to the City's proposed Mello Act Ordinance. The state Mello Act (California Government Code section 65590 *et. seq.*) broadly requires: (1) replacement of affordable units demolished or converted in the coastal zone; and (2) inclusion of affordable units in new housing developments and conversions in the coastal zone. In 1993, the Western Center on Law and Poverty and the Legal Aid Foundation of Long Beach (now part of the Legal Aid Foundation of Los Angeles) filed a lawsuit against the City of Los Angeles alleging that the City failed to comply with the Mello Act.<sup>1</sup> In 1996, a California Court of Appeal ruled against the City.<sup>2</sup> All parties signed a Settlement Agreement in 2000 and the City adopted the Interim Administrative Procedures for Complying with the Mello Act (IAP), which currently dictate the City's Mello Act compliance.

Since the Settlement was signed and the IAP was adopted 20 years ago, the Legal Aid Foundation of Los Angeles has been at the forefront of Mello Act compliance and enforcement in the City of Los Angeles. As a result, we are intimately familiar with what is working and what is not. Our recommendations included in this letter and in the attached revised ordinance are based on over two decades of experience. Pursuant to the terms of our Settlement, the City is

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<sup>1</sup> *Venice Town Council v. City of L.A.*, L.A. Super. Ct. No BC089678.

<sup>2</sup> *Venice Town Council v. City of L.A.*, 47 Cal. App. 4th 1547 (1996).

**Other Office Locations:**

**East Los Angeles Office**, 5228 Whittier Blvd., Los Angeles, CA 90022  
**Long Beach Office**, 601 Pacific Ave., Long Beach, CA 90802  
**Santa Monica Office**, 1640 5th St., Suite 124, Santa Monica, CA 90401  
**Ron Olson Justice Center**, 1550 W. 8th Street., Los Angeles, CA 90017



required to adopt a Mello Ordinance that is consistent with the terms of our Settlement and the Mello Act. Our Settlement provides:

All City Policies and City Procedures, and all other ordinances, programs, plans, and policies in the Coastal Zone, shall be consistent with the Mello Act and this Agreement. *All future zoning, land use, development and planning regulations, ordinances, resolutions and policies adopted by the City shall be consistent with the Mello Act and this Agreement.*<sup>3</sup>

Importantly, the IAP was written to mirror the Settlement, so the baseline requirements in the IAP must also be the baseline, minimum requirements for the Ordinance. As a result of the rights given to us by our Settlement and over 20 years of working to implement the Mello Act in the City, we are key stakeholders in the adoption of this Ordinance. Over the last five years, we have participated in ongoing meetings with the City to try and reach agreement about what should be included in the Ordinance. Unfortunately, much of our work has been ignored and is not reflected in the draft that you are being asked to consider. Please consider the attached revised draft as well as these comments.

## **1. Offsite compliance is not the best way to achieve the goals of the Mello Act.**

As the Department of City Planning has noted, the purpose of the Mello Act is to preserve and increase the overall number of residential dwelling units and affordable dwelling units *within the California Coastal Zone*. Section H.5(c)(8) of the draft Ordinance allows applicants to provide their required inclusionary affordable units at an offsite location, *potentially outside of the Coastal Zone*, if including them onsite at the originating project is found to be infeasible.

We request that the City remove section H.5(c)(8) and include a different feasibility methodology. If a Feasibility Study determines that it is infeasible to locate Inclusionary Units onsite, applicants should be allowed a reduction in the number of onsite Inclusionary Units until the project is feasible. This better preserves and expands opportunities within the Coastal Zone, because there is no possibility that those units will be provided for outside of the Coastal Zone.

State law is explicit that the requirements in the Mello Act are “*minimum* requirements for housing within the coastal zone” and that local governments have the authority to add requirements for affordable housing “which [are] in addition to the requirements of [the Mello Act].”<sup>4</sup> Thus, the City has authority to enhance the state law requirements by making them stronger, stronger meaning that they provide more affordable housing within the Coastal Zone. One of these minimum requirements in state law is that new housing developments can provide their required housing for low or moderate income families at a different location if it would be infeasible to provide it onsite at the originating project.<sup>5</sup> The City has clear authority to go beyond this and “require ... low- or moderate-income housing within the coastal zone which is in addition to” this inclusionary housing requirement.<sup>6</sup> Removing the draft Ordinance’s offsite

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<sup>3</sup> Settlement § IV.B.2 (emphasis added).

<sup>4</sup> California Government Code section 65590(k) (emphasis added).

<sup>5</sup> California Government Code section 65590(d).

<sup>6</sup> California Government Code section 65590(k).

compliance rules and replacing them with our proposed onsite compliance rules would therefore be stronger than what state law minimally requires, because it would result in more affordable housing in the Coastal Zone.

In our 21 years of experience enforcing the Mello Act in Los Angeles, offsite replacement units have proven impossible to monitor and enforce. The developments at Dogtown, Venice Art Lofts, and Princeton are three examples of how allowing offsite affordable units does not work. In those cases, the developers proved unwilling to provide the offsite units. It took thousands of legal hours, years of effort, and countless City time to address. In the end, onsite units ended up being converted to affordable units. We must learn from the past and not repeat the same mistakes. Instead of offsite units or in lieu fees, developers should, on appeal, be able to request a reduction in the number of onsite affordable units to make a project financially feasible.

## **2. Feasibility should be a tightly regulated release valve, not a vehicle for noncompliance.**

For two decades, our experience with the Mello Act has revealed developers who do everything they can to manipulate data to make providing affordable units in the Coastal Zone “infeasible.” This paradigm must change. The Ordinance needs the following revisions to ensure that the concept of feasibility is used only to modify projects that meet the goals of the Mello Act but for some reason cannot be achieved according to the letter of the law, rather than as a means of avoiding compliance with state law obligations.

### **a. A feasibility methodology is needed for for-sale units.**

Section H.5(c) requires certain projects to designate a percentage of total units as affordable. This inclusionary housing requirement applies both to projects that will result in rental and owner-occupied housing. As part of this requirement, and consistent with state law, the Ordinance allows for a Feasibility Study to modify this requirement. However, the Feasibility Study Methodology in section H.9 only includes a methodology for evaluating the feasibility of rental housing.<sup>7</sup> Because the inclusionary housing obligation, and therefore the Feasibility Study procedure, applies to for-sale housing as well, the Ordinance must include a methodology for evaluating it. See attachment for a proposed methodology created by economist and urban planning professor Joan Ling. This must be added so consultants have a consistent, objective set of measures to analyze.

### **b. The assumptions around feasibility should be revised to eliminate a few easily-manipulatable areas.**

Despite changes made by the City Planning Commission, key parts of the feasibility methodology in Section H.9 are still missing. First, the assumptions around land cost should include additional language defining a third-party arms-length transaction and explaining how to analyze a purchase which was not arms-length. Second, Consultant fees should also be considered a soft development cost. Next, it should be explicit that the Housing Department retains the right to accept, modify, or reject applicant assumptions around feasibility. Lastly, the

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<sup>7</sup> Proposed Los Angeles Municipal Code § 12.21.H.9.c.



language around offsite location analysis in section H.9(f)<sup>8</sup> should be changed to not apply to Inclusionary Housing units, consistent with our recommendation above.

- c. The feasibility study process should also be modified to further remove undue influence.

We support the concept of the Housing Department maintaining a list of qualified consultants, who must use the Ordinance's methodologies and assumptions when determining feasibility. However, to remove any shadow of doubt that a developer may manipulate or influence the outcome of this objective process, the applicant should not be allowed to directly contract with and pay the consultant. Section H.8(a) should be revised so that applicants can only pay the consultant fee directly to the Housing Department and provide the necessary data. The Department should then hire the consultant to conduct the feasibility study using the Ordinance's methodology and data provided by the developer.

### **3. Any housing that is affordable to lower income families should be replaced.**

The primary purpose of the state Mello Act is the preservation of existing affordable units within the Coastal Zone. The Ordinance lays out a process for surveying and determining whether a unit is considered affordable and requires replacement. However, the documentary evidence of affordable units required by Section H.6(a) must not be the applicant's obligation to provide. The Housing Department should undertake to survey the tenants and property, requesting any relevant information directly from the residents when possible, and from the applicant only when there are no tenants in place. Applicants have every incentive to obfuscate information and prevent affordable units from being counted, so the Housing Department should not solely rely on applicant representations when conducting a Mello Act Assessment.

In addition, the draft Ordinance is lacking several important factors in determining what is an "affordable" unit. The Housing Department should also be required to consider the following when performing a Mello Act Assessment. In addition, the Department should ensure that it seeks this information in each tenant's primary language.

- a. Rent-stabilized units are not the only price-controlled units in Los Angeles.

Section H.6(a)(2) of the draft Ordinance only requires counting units subject to the Los Angeles Rent Stabilization Ordinance as affordable. However, the definition of "Affordable unit" in section H.3 includes any unit "that is or was subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years." Section H.6(a)(2) must be updated so that the Ordinance is internally consistent. This is important because there are affordable units in the Coastal Zone which are affordable because they are subject to a form of price control other than the Los Angeles Rent Stabilization Ordinance, such as the Tenant Protection Act of 2019.

- b. Housing affordability is about rental price as well as family income.

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<sup>8</sup> Sections H.9(h) in the attached revised Ordinance.

In addition to collecting tenant income information, the Housing Department should also collect rental history information for the previous five years. If the rents actually charged were at or below the maximum allowable rent for a particular Area Median Income, the unit should be deemed affordable at that Area Median Income level. This will capture and preserve “naturally occurring” affordable units.

c. Tenant buyouts are more common in units with lower rent.

The Housing Department should also look at any voluntary buyout agreements entered into with former tenants in the previous five years pursuant to the Tenant Buyout Notification Program.<sup>9</sup> Buyout agreements are used by developers to remove low-income tenants in order to avoid the units being deemed affordable. The Housing Department should already have this information as part of the Tenant Buyout Notification Program.

**4. Major Remodel should be redefined to include the displace-inducing construction actually seen in the Coastal Zone.**

Our experience shows that landlords engage in significant construction, often disguised as “renovation” or “remodel” work, in order to displace tenants, forcing them to self-evict. These renovations have the effect of increasing housing costs, making the coastal zone even more unaffordable. Therefore, the definition of Major Remodel in section H.3 should be expanded to also include any work that involves the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. This definition is consistent with the definition of “substantial remodel” in the state Tenant Protection Act.<sup>10</sup>

**5. In lieu fees will not result in the creation of affordable housing if they are not spent.**

The draft Ordinance collects much needed funds for the Coastal Zone Affordable Housing Trust Fund. However, there is no timeline for when funds must be committed or spent. Therefore, projects that generate fees in lieu of actual units may never result in the creation of units in the coastal zone. Therefore, we recommend that the ordinance be revised to require that Trust Fund fees be committed within two years and spent within four.

Sincerely,



Jonathan Jager  
Staff Attorney

Encl.

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<sup>9</sup> Los Angeles Municipal Code § 151.31.

<sup>10</sup> California Civil Code § 1946.2(b)(2)(D)(ii).

ORDINANCE NO. \_\_\_\_\_

SECTION 1            The Los Angeles Municipal Code is hereby amended  
to include Section 12.21.H which shall read as follows:

H. **Mello Act Compliance in the Coastal Zone Area.** Housing preservation and development requirements in the Coastal Zone Area designed to comply with California Government Code Section 65590 and 65590.1.

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 within the Coastal Zone. The following principles shall guide the interpretation of these regulations:

- a. Promote consistency with the implementation of the provisions of the Mello Act (Government Code Section 65590 and 65590.1).
- b. Ensure the preservation and maintenance of existing Residential Units, both affordable and market rate, unless a residential use is no longer feasible at that location.
- c. Protect units occupied by Extremely Low, Very Low, Low, and Moderate Income persons or households by ensuring the replacement of those units occur on a one-for-one basis, with an affordability level equaling like-for-like, or lower.
- d. Require new residential projects of a certain size to provide Inclusionary Units for Extremely Low, Very Low and Low Income persons or households.

**2. Relationship to other State and Local Zoning Regulations.**

- a. Where other entitlements and/or regulations require the provision of affordable units 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 per unit shall prevail.
- b. Fees calculated, charged, or collected based on residential use, to provide for affordable units, 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.
- c. In the case of conflict between this Section H and any applicable Specific Plan, certified Local Coastal Program, or other State or local regulation, the requirements that result in

the greatest number of Affordable Replacement Units and Inclusionary Units, with the deepest affordability levels per unit, shall prevail.

- 3. Definitions.** The following definitions apply to LAMC Section 12.21 H and are in addition to those found in the California Public Resources Code.

**Affordable Housing Incentives Guidelines.** The guidelines adopted by the City Planning Commission on June 24, 2005, 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 of “affordable housing cost” 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 of “affordable rent” 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 and/or provided [onsite](#) to satisfy replacement requirements, at the same or lower affordability level.

**Affordable Unit.** A protected Residential Unit, as determined by HCIDLA and DCP, and defined as any of the following: (1) A Residential Unit that is or was subject to a recorded covenant, ordinance, or law that restricts rent to levels affordable to persons or households of Moderate, Low or Very Low or Extremely Low income within the past five years. (2) A Residential Unit that is or was subject to any form of rent or price control through a public entity’s valid exercise of its police power within the past five years. (3) A Residential Unit that is or was occupied by a Moderate, Low, Very Low-income or Extremely Low household within the past five years as determined by HCIDLA.

**Coastal-Dependent Non-Residential Use.** As defined in Section 30101 of the Public Resources Code, or “coastal dependent,” as defined in Section 30101.3 of the Public Resources Code, any non-residential development or use that requires a site on, or adjacent to, the sea to be able to function.

**Coastal-Related Non-Residential Use.** As defined in Section 30101 of the Public Resources Code, or “coastal related,” as defined in Section 30101.3 of the Public Resources Code, 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).

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

**Coastal Zone Community.** As established by the Coastal Act of 1976, 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 (a portion of the Brentwood-Pacific Palisades Coastal Zone areas); Venice (a portion of the Venice, Palms- Mar Vista-Del Rey, and Westchester-Playa del Rey Coastal Zone areas); San Pedro (a portion of the San Pedro Coastal Zone areas), and Wilmington (a portion 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, (covenanted or determined affordable by a Mello Determination) or marketrate. [The structure or structures that contain these Residential Units are located either on a single lot or contiguous lots; or conform to the definition of a Unified Development or Serial Development.](#)

**Demolition.** The removal or replacement of more than 50 percent to any existing exterior walls, foundation walls or roof framing to one or more existing Residential Units or a project defined as a Major Remodel.

**Feasible.** As defined by Section 65590 of the Government Code Section, capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

**HCIDLA.** City of Los Angeles Housing + Community Investment Department.

**HCIDLA Mello Act Assessment.** A letter regarding the quantity, affordability levels, location and replacement requirements for Residential Units made by the Los Angeles Housing and

Community Investment Department. [HCIDLA shall have sole discretion for making such determinations and cannot be overruled by other Departments.](#)

**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.

**Major Remodel.** A project that [either increases the existing structure by more than 50 percent of existing floor area within a residential structure or involves the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days.](#)

**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 per LAMC 12.24 W 19.

**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 Residential Units.

**Residential Unit.** A dwelling unit, including an efficiency dwelling unit, accessory dwelling unit, junior accessory dwelling unit, light housekeeping 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 (inclusive of individual rooms within 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 used as a residence.

**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 on the subject property within a 5-year time period of submission of a previous Mello application, or within contiguous properties within a 5-year time period of submission of a previous Mello application, for which a Mello Act compliance review was required in the past and is presently required in conjunction with a proposed project. This also includes multiple permit requests for one property that, when combined, result in a Demolition as defined in this section.

**Unified Development.** As defined in LAMC 12.24 W 19(c), a development of two or more Residential Units, buildings and/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.

4. **Mello Act Exception:** No permits shall be issued by the Department of Building and Safety for any ministerial or non-ministerial action involving the Demolition, Conversion, or New Construction of a Residential unit in the Coastal Zone until the Department of City Planning and HCIDLA determines the action qualifies for an exception. The following shall qualify for an exception from the general provisions and procedures in this Ordinance:

- a. **Demolition of a Structure declared as a Public Nuisance.**  
The Demolition of a residential structure or unit that has been 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 Section 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. Replacement with a Coastal Dependent Use.** The Conversion or Demolition of a residential structure for purposes of a nonresidential use that is ~~either~~ "coastal dependent," as defined in Public Resources Code Section 30101, ~~or "coastal related," as defined in Public Resources Code Section 30101.3;~~

**c. Owner-Occupied Single Family Homes.** Applicants who propose to demolish an existing single-family dwelling in which they have currently resided in for one year or more, and replace it with another one-family dwelling, in which they intend to reside for one year or more, are exempt from Mello Act ~~Compliance Review~~ replacement and inclusionary housing obligations. The owner and occupant must be 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 or Mello Review Exception. Should the Single Family Home be 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, it is not subject to the provisions for providing an Affordable Replacement Unit for their one Residential Unit. A Single Family Home owned by a legal entity such as, but not limited to, a Limited Liability Corporation or Corporation may not qualify for this exception, unless the entity can prove that the Limited Liability Corporation or Corporation belongs to a natural person who has maintained primary residency within the Residential Unit for the one year prior to the filing of the Mello Act Compliance Review or Mello Review Exception. Properties held in Trusts may not qualify for this exception, unless the applicant can prove that an individual is a Trustee to the property held in the Trust and has maintained primary residency within the unit for the one year prior to the filing of the Mello Act Compliance Review or Mello Review



Exception.

- d. **Creation of 4 or Fewer New Dwelling units.** Applicants who propose to develop 4 or fewer new dwelling units on a single site, without demolishing existing units, shall be exempt from further Mello Act compliance review. Applicants are not exempt from any incurred Affordable Housing Linkage fee payments, pursuant to section 19.18 of the Los Angeles Municipal Code. All Affordable Housing Linkage fee payments to be made into the Coastal Zone Affordable Housing Trust Fund.

**5. General Provisions.** Projects in the Coastal Zone shall comply with the following provisions:

- a. **Conversion or Demolition.** Projects resulting in the Conversion or Demolition of existing Residential Units, shall comply with the following provisions:

- 1. **Conversion or Demolition of an existing Residential Unit to a non-Residential unit.** Conversion or Demolition of any existing Residential Unit, for purposes of a non-residential unit that is not Coastal-Dependent, is prohibited, unless a residential unit is deemed no longer feasible through the Appeal Process (see Section 8 and 9 for applicable Feasibility Study Provisions and Feasibility Study Methodology requirements). Conversion of a Residential Unit to a guest room in an Apartment Hotel or Hotel will constitute a Conversion to a non-residential unit and is not permitted. [Registration of a residential unit in the Coastal Zone as a short-term rental or listing with an online platform for the purposes of short-term rental shall constitute a Conversion to a non-residential use and is not permitted. Any registration of units or parts of units \(bedrooms, accessory dwelling units, etc.\) that violate the City's requirements for allowable short-term rentals shall also constitute a Conversion to a non-residential use and is not permitted.](#) The Department of City Planning shall determine feasibility based on the review of Substantial Evidence.

- a) **Feasibility of Maintaining Existing Residential Unit.** The City presumes continued feasibility of a Residential Unit and maintaining the existing number of Residential Units. It is the Applicant's burden of proof to show otherwise, with substantial evidence. The Director of City Planning will be responsible for determining the feasibility

of maintaining a Residential Unit by assessing the following:

- i. Proximity to other existing, viable residential uses provides strong evidence that a residential use is feasible.
- ii. Applicant-initiated zone changes, or a lapse in non-conforming rights resulting in a prohibition of residential use of the property shall not render a project infeasible. If an applicant currently 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. Site Zoning and Land Use Designations of the site, along with current non-conforming rights afforded the property shall be considered when determining feasibility. Adjacent zoning, that may be incompatible with a residential use, shall also be considered.
- iv. Condition of the Unit will be assessed when determining feasibility. Units that are dilapidated or in a state of disrepair due to failure to make reasonable repairs or to adequately maintain the site shall not be considered infeasible. [The City may require that substandard conditions are corrected prior to considerations of infeasibility.](#)
- v. Ability of the Applicant 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 Application may not cite mere proximity to commercial or industrial uses.](#)
- vi. Feasibility will be determined based on the characteristics and circumstances of the property,

including proximity to noxious and incompatible existing uses that are likely to remain and cause an inability to rent or sell the current premises.

- vii. [Infeasibility cannot be claimed merely because the site is zoned for non-residential uses. Infeasibility cannot be claimed merely because the site is zoned for industrial use of a prior land use determination approved residential use of the site \(i.e., live-work units\). A Zoning Administrator's grant runs with the land.](#)

## **2. Conversion or Demolition of an Affordable**

**Unit.** Conversion or Demolition of an Affordable Unit is prohibited, unless replaced with an Affordable Replacement Unit. Affordable Units are to be preserved or replaced at the same bedroom type and made affordable to [households with at least the same income levels, or lower incomes,](#) as those existing households at the time the units were occupied. In addition, the following provisions apply to conversions and Demolitions:

- a) **Affordable Units located within a single-family dwelling and duplex.** Affordable Units located within a single-family dwelling or duplex on a lot or Unified Development containing no more than two Residential Units shall be replaced with an Affordable Replacement Unit
- b) **Affordable Units located in Multi Family or Unified Development Properties containing 3 or more units.** All Affordable Units located within the same structure, on the same property, or within a Unified Development or Serial Development, which contain three or more Residential Units, shall be replaced on a one-for-one basis with an Affordable Replacement Unit, provided that the density conforms with the existing regulations. [A Feasibility Study will not be accepted or considered to reduce this requirement.](#)

**b. Affordable Replacement Unit.** Projects resulting in the development of an Affordable Replacement unit must follow the provisions set below:

**1. Level of Affordability.** An Affordable Replacement Unit will be provided at the same level of affordability, or lower, as the Affordable Unit being replaced. Affordability levels are defined in the California Government Code Sections 50053 and 50025.5.

**2. Size of an Affordable Replacement Unit.** An Affordable Replacement Unit will contain the same number of bedrooms and bathrooms as the Affordable Unit it is replacing.

**3. Location.**

**a) Onsite Replacement.** All Affordable Replacement Units shall be provided onsite where the Conversion or Demolition of the existing unit occurred.

**b) Off-Site Options for Single Family Dwelling and Duplexes.** Consistent with State Government Code Section 65590 section (b), projects required to provide an Affordable Replacement Unit within a single-family dwelling or a duplex may file for an appeal to request permission to provide the required units within the same Coastal Zone community by submitting an appeal pursuant to the Appeals procedures in Section 7 of this Ordinance, in addition the applicant is required to comply with the Feasibility Study Provisions outlined in Section 8 and the Feasibility Study Methodology Section 9 of this Ordinance.

If the appellate body finds that it is infeasible for a Single Family Dwelling or Duplex, to provide an Affordable Replacement Unit within the same Coastal Zone Community, then the Affordable Replacement Unit may be located anywhere within three (3) miles of the ~~Coastal Zone~~ site where the Demolition or Conversion of a Residential Unit occurred.

4. **Timing.** Replacement Affordable Units will be made available for occupancy prior to or at the same time as market-rate Residential Units in the Project are available ~~or within three years of the date upon which work commenced on the Conversion or Demolition, whichever occurs first.~~
5. **Tenants Rights.** HCIDLA will establish and maintain a program for tenants who will be displaced as a result of any proposed Demolition or Conversion so that such tenants can exercise a “Right of Return” to the Affordable Replacement Units that are required pursuant to the regulations set forth in this Ordinance.
6. **Right of First Return Criteria.** Replacement Units must initially be offered to displaced tenants with income levels determined to be in the Extremely Low, Very Low, Low and Moderate income category. The following Right of First Return Criteria applies to the Replacement unit:
  - a) **Tenant Displacement.** Tenants must have been displaced from the demolished or converted Residential Unit that necessitated the Affordable Replacement Unit.
  - b) **Refusal of Replacement Unit.** Should displaced tenants refuse the Affordable Replacement Unit, it may be made available for rent to a new tenant.
  - c) **HCIDLA Notification.** HCIDLA will notify impacted tenants of their rights and advise them to provide HCIDLA with income verification and updated contact information.
7. **Feasibility.** Upon Appeal, projects required to provide an Affordable Replacement Unit within a Single Family Dwelling and/or a Duplex that is not part of a Unified or Serial Development of 5 or more units may apply for a Feasibility Study to locate units offsite. For such projects, if an Affordable Replacement Unit cannot feasibly be located onsite, pursuant to section 8 and 9 of this Ordinance, the Affordable Replacement shall be located within the Coastal zone. If location within the coastal zone is found not feasible, the

Replacement Unit shall be located within three (3) miles of the coastal zone. All offsite units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition. If a Replacement Unit within three (3) miles of the Coastal Zone Boundary is not feasible, the unit may be removed, and the applicant may be charged an in lieu fee equivalent to the Fractional Fee for the square feet of the removed unit.

**c. New Housing Development.** Projects resulting in a New Housing Development of 5 or more new residential units, not including any required Affordable Replacement Units or other restricted Residential Units, will reserve a percentage of the total units as Inclusionary Residential Units. The Director of City Planning shall determine the number of required Inclusionary Residential Units.

**1. Inclusionary Residential Units.** A New Housing Development shall provide Inclusionary Units at a rate of at least the minimum percentages described below. A Project's requirement to provide Inclusionary Units will be fulfilled through providing:

- a) A minimum of 8 percent of the proposed Residential Units reserved on-site for Extremely Low Income Households; or
- b) A minimum 11 percent of the proposed Residential Units reserved on-site for Very Low Income Households; or
- c) A minimum of 20 percent of the proposed Residential Units reserved on-site for Low Income Households.

**2. Timing.** Inclusionary Units will be made available for occupancy at the same time as market-rate Residential Units in the same Project. ~~If residential units are approved for the offsite provision, the Certificate of Occupancy shall be issued for the offsite affordable unit prior to the issuance of a Certificate of Occupancy for the onsite market rate units. Offsite Units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.~~

**3. Amount Required.** The number of required Inclusionary Residential Units is based on a percentage of the total Residential Units proposed,

not including any required Affordable Replacement Units or other restricted Residential Units also required to be provided on-site.

- 4. 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 onsite. 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. HCIDLA will be responsible for collecting such fees prior to the issuance of any permits for the development. Fees shall be paid into the Coastal Housing Trust Fund.

**a) Fractional Fee Amount.** 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

**b) Fractional Fee Adjustment.** HCIDLA will adjust these fees annually, along with changes to the Linkage Fee, starting with a base year of 2016, utilizing changes in construction costs as measured by a regularly published industry Construction Cost Index and changes in land costs as measured by the change in median condominium sales prices in the specific coastal zone community where the property is located. 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.

- 5. Mixed Use Development.** A proposed mixed-use development may not result in a net reduction in the total number of existing Residential Units unless a residential use is no longer feasible. A mix of uses is permitted, so long as the structure



maintains at least the existing number or residential units and provides all required Replacement Affordable units on site and Inclusionary Units.

6. **Serial Development.** When development is undertaken by the same applicant on the subject property or within contiguous properties 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, the development shall be considered a Serial Development. In this case development within a five year period 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 Units which were previously not required in prior project approvals but required as a result of the aggregate project.
7. **Affordable Housing Incentives.** Affordable Replacement Units and Inclusionary Units required to be provided through Mello Act compliance review may be counted toward a project's overall provision of affordable dwellings when applying for affordable housing development incentives, pursuant to LAMC Section 12.22 A.25 or any other affordable housing development incentive program.
8. ~~**Feasibility.** Upon Appeal, Applicants are permitted to apply for a Feasibility Study to locate Inclusionary Units offsite. For such projects, if an Inclusionary Unit cannot feasibly be located onsite, pursuant to section 8 and 9 of this Ordinance, the Inclusionary Unit shall be located within the Coastal zone if feasible, or, if location within the coastal zone is not feasible, shall be located within three (3) miles of the coastal zone, and shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.~~

6. **HCIDLA Mello Act Assessment.** Upon initiation of the Mello Act Compliance Review with the Department of City Planning, all Projects shall pay applicable fees for and request a Mello Act Assessment Letter from HCIDLA. HCIDLA will submit a completed Assessment in the form of a publicly available inter-departmental memorandum to the Department of City Planning, which shall include the following analysis:

- a. **Number of existing Affordable Units.** HCIDLA has sole



responsibility for determining: (1) Whether an existing Residential Unit is an Affordable Unit and (2) the level of affordability of that Residential Unit. HCIDLA will make this determination based on the information provided by the applicant at the time of application filing with the Department of City Planning, as well as from current or former tenants. HCIDLA may request additional information or documentation from the Applicant and/or tenants to make a finding of an existing Affordable Unit. HCIDLA shall make all communication with tenants in a tenant's primary language.

The applicant must submit documentary evidence substantiating the following for consideration by HCIDLA:

1. Income documentation of tenants, detailing affordability level of the unit for the previous 5 years. If no documents are available, the unit will be presumed affordable to Very Low Income Households.
2. The number of existing Affordable Residential Units subject to ~~the Rent Stabilization Ordinance (beginning with Section 151 of the Los Angeles Municipal Code);~~ any form of rent or price control through a public entity's valid exercise of its police power currently or within the last 5 years.
3. The issuance of notices to vacate and/or Evictions, within the five years preceding the HCIDLA Mello Act Compliance Assessment.
4. The number of persons or families of Extremely Low, Very Low, Low, or Moderate income and their receipt of Notices to Vacate or evictions 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.
5. The number of Residential Units that can be shown to have been vacant for more than the 5 years preceding the filing of an application for a Mello Act Compliance Review. These units will not be considered affordable.
6. Current Residential Units that are owner-occupied for one year or more will not be determined to be an Affordable Unit. Only one dwelling unit within an existing multi-family structure shall be determined to be owner-occupied.

7. The number of Residential Units which were rented at rates at or below the maximum allowable rent, according to HCIDLA, for persons or households of Moderate, Low, Very Low, or Extremely Low Income within the past five years.
8. The number of Residential Units subject to a recorded covenant, ordinance, or law that restricts rent to levels affordable to persons or households of Moderate, Low, Very Low, or Extremely Low income within the past five years.
9. The number of voluntary buyout agreements, including but not limited to those made under LAMC § 151.31, offered or entered into in the past five years.

**b. Affordable Housing Provision Plan.** All Projects required by HCIDLA or Department of City Planning to provide Affordable Replacement Units will also be required to prepare an Affordable Housing Provision Plan (AHPP) by the applicant. The AHPP will be submitted to HCIDLA along with applicable fee for review and approval by HCIDLA prior to the issuance of any demolition, change of use, or building permit, land use approval, or certificate of occupancy, whichever comes first.

The AHPP shall contain the following:

1. **Description.** A description of how the Required Affordable Units (Replacement and Inclusionary Units) will be provided, as new units, through new construction or adaptive reuse of an existing non-residential structure.
  - a. A description of the required Affordable Units, including the number and type of bedrooms, minimum square-footage, and parking.
  - b. A description of how the new development will also comply with all of the applicable sections of the approved Affordable Housing Incentive Guidelines, as amended.
  - c. A description of how new development will also comply with all applicable Development Standards for required Affordable Replacement and Inclusionary Residential Units, as outlined below.
2. **Development Standards.** A description of how the applicant will comply with the following standards for

required Affordable Replacement and Inclusionary Residential Units.

- a. **Comparable Unit.** Restricted residential units will be comparable in every manner to market-rate units, except in the quality of interior finish materials for walls, ceilings, floors and other interior surfaces of buildings. The restricted unit(s) will be comparable in total square footage, number of bedrooms, bedroom size, closet space and amenities. 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. If the market-rate units are rental units, the affordable units shall be rental units. If the market-rate units are ownership units, the affordable units shall be ownership units.
- b. **Affordable Replacement Units.** Restricted residential units will contain at least the same number of bedrooms and bathrooms as the existing Affordable 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 residential unit in the development and should proportionally reflect the mix of unit types in the development.
- d. **Location of Units.** Restricted units must be interspersed among market-rate residential units within the same building. They may not be grouped together on one level or in less desirable sections of the building. In multiple building developments, restricted residential units must be reasonably dispersed among the buildings.
- e. **Equal Distribution of Amenities.** Residents of Replacement Units and Inclusionary units may not be charged for amenities that are provided at no cost to other market-rate residents including, but not limited to, access to recreational facilities, parking, internet and interior amenities. Optional services

provided must be an option for all residents, and available to all under the same terms and conditions. All incentives must be offered to all new residents, not only residents of market-rate residential units.

3. **Timing Requirements.** A description of the financing, construction plan, and project timetable for the provision of required Replacement and Inclusionary Units will be provided to ensure accountability and compliance with the timing requirements for the required Units.

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

**b. Initiation.** An applicant shall file an application with the Department of City Planning on a form provided by the Department, and shall include all information required by the instructions on the application and the guidelines adopted by the Director of Planning. Any filing fees required under Section 19.06 A. shall be included with the application.

**c. Determination.**

1. **Authority.** The Director of City Planning is the initial decisionmaker and may approve, conditionally approve, or deny the Mello Act Compliance Review.
2. **Time to Act.** 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 Assessment Memorandum. This time limit may be extended by mutual consent of the Director and the Applicant.
3. **HCIDLA Mello Act Assessment Memorandum.** The applicant shall file an application for an HCIDLA Mello Act Assessment for the Demolition or Conversion of existing Residential Units.
4. **Standards for Review.** The Director will grant a Mello Act Compliance Review upon written findings that the project complies with the provisions of this Ordinance.

- 5. Findings.** In granting Mello Compliance Determination in the Coastal Zone, the Director shall make each of the findings:
- a) That the Project is consistent with the Provisions and Procedures located within Sections 5 through 9 of this Ordinance.
  - b) Findings to conclude that a residential use or residential unit is not feasible, pursuant to section 12.21 H.5(a)(1)(a):
    - i. The Applicant provided substantial evidence for the Director to determine that a residential use is not longer feasible onsite.
- 6. Limitations.** Granting of a Mello Act Compliance Review will not imply compliance with any other applicable provisions of the Los Angeles Municipal Code, which require additional land use entitlement.
- 7. 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 or alley from, 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 Council member(s) having jurisdiction over the area in which the property is located; Empower LA, The Department of Neighborhood Empowerment, [any parties required to be notified under the Mello Act Implementing Guidelines](#), and other parties who have requested in writing a copy of the determination.
- 8. Appeals.** The appeals process and procedures for Mello Act Compliance Review determinations will be as indicated below. If a Project requires both a Mello Act Project Permit Compliance and one or more other discretionary land use approvals, then the procedures set forth in Section 12.36 of this Code concerning multiple approvals shall govern. If a Project only requires a Mello Act Project Permit Compliance and no other discretionary land use approvals, then the assigned decision-maker is the Director of Planning and the procedures set forth below shall govern.

a) **Filing.** An Applicant or any other person aggrieved by the Director's decision may file an appeal.

b) **Feasibility Study.** The applicant may file an appeal and request a feasibility study to determine the feasibility of the development of a Replacement Unit(s) in a Single Family or Duplex development or an Inclusionary Unit is infeasible, the applicant shall request a Feasibility Study and submit fees, pursuant to subsections 8 and 9 of this Ordinance, from HCIDLA at the point of filing.

c) **Appellate Decision.**

i. **Notice of Public Hearing.** Before acting on any appeal the Area Planning Commission will set the matter for hearing, giving notice in the manner specified below:

Type of Notice	Time	Where / To Whom / Additional Requirements
Mail	21 days	<ul style="list-style-type: none"><li>• The applicant;</li><li>• The owner(s) of the property involved;</li><li>• All tenants and units in the property at issue;</li><li>• Owners and Occupants of properties within 100 feet radius of the exterior boundaries of the property involved;</li><li>• The Councilmember(s) having jurisdiction over the specific plan area in which the property is located;</li><li>• <a href="#">Parties required to be notified under the Mello Act Implementing Guidelines</a>; and</li><li>• Other parties who have requested notice in writing.</li></ul>

ii. **Time to Act.** The Area Planning Commission will act within 75 days after

the expiration of the appeal period.

- iii. **Findings.** The appeal action must contain the same findings required to be made by the Director, supported by facts in the record, in addition to the following findings to conclude a replacement unit use is not feasible:
  - 1. The feasibility analysis was prepared in a professional and appropriate manner, and the facts and information presented in the feasibility analysis are accurate to the best of the review authority's knowledge; and
  - 2. The feasibility analysis concluded that the provision of affordable housing as required by this Ordinance is infeasible.
- iv. **Authority.** The Area Planning Commission may sustain, reverse, or modify, in whole or in part, the decision of the Director.

**9. Modification of Entitlement.** The terms of a final determination pursuant to this Section cannot be subsequently modified except through the refiling of a new request for a Mello Act Compliance Review determination.

**8. Feasibility Study Provisions.** Should the Project Applicant request a feasibility study to determine feasibility of providing a required Affordable Replacement Unit (for a Single Family or Duplex Project) or an Inclusionary Unit, the Applicant shall submit a request for a Feasibility Study to HCIDLA as well as an Appeal of the Mello Act Compliance Determination. The Feasibility study shall comply with the Feasibility Study Methodology found in Subsection 9 of this Ordinance.

- a. An applicant claiming infeasibility is responsible for paying a fee to HCIDLA ~~or the consultant~~ prior to the commencement of the study. HCIDLA will ~~either~~ use this fee to hire ~~or will require the applicant to hire~~ a consultant, from an approved list of neutral third party consultants,

to undertake a feasibility study. The consultant will be managed by HCIDLA. This feasibility study will utilize the methodology described in Subsection 9 and the thresholds and the Mello Act Implementing Guidelines, described in subsection 11 of this Ordinance. 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. The City presumes that all Replacement Units and Inclusionary Units are feasible. It is the applicant's responsibility to prove infeasibility. A Feasibility Study will only be considered when an applicant disagrees with the HCIDLA Mello Act Assessment, and only under the following two circumstances:

1. Replacement of Affordable Residential 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 claims that full compliance is not feasible, the Applicant may request a reduction in the number of required Inclusionary Units. 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 Unit obligations of Subsection 5c of this Ordinance, the Applicant may request [a reduction in the number of required Inclusionary Units](#) ~~allowance to place the unit(s) offsite within the Coastal Zone or up to three (3) miles of the Coastal Zone. A reduction in the number of required Inclusionary Units may also be requested~~ and may include payment into the Coastal Housing Trust Fund.

c. HCIDLA will transmit to the Director of Planning a copy of the Feasibility Study, HCIDLA's Mello Act Compliance Assessment Memorandum 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.



**9. Feasibility Study Methodology.** The following methodology will be utilized for the purposes of HCIDLA to determine a project's feasibility of providing Affordable Replacement Units (Single Family or Duplex only) or Inclusionary Units.

**a. Reputable Published Data.** Reputable published data sources for the following will be identified and included in the Mello Act Implementing Guidelines and may include research including 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 Affordability.** The following assumptions apply to the data utilized in the Feasibility Study.

1. Construction costs should be no more than the per square-foot construction cost regularly 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 fees, and other consultant fees, should not exceed 25 percent of the construction costs.
3. Land cost should be the actual purchase price for the property bought in a third party arms length transaction within three years from the time of the feasibility study being conducted, as reflected in the purchase contract. A third party arms length transaction is a sales transaction in which the buyer and seller act independently solely in their own self-interest and do not have any relationship with one another. For earlier land purchases, or land purchases not as result of a third party arms length transaction, 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.** Feasibility will be determined by yield-on-cost: annual net operating income divided by total development cost. Net operating income is defined as the current income of a property, net all of the operating expenses, but before any reserves, debt service

capital expenditures, tenant improvements, and leasing commissions. Total Development cost is defined as the sum of all construction costs, soft development costs and land costs. 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. If a project meets or exceeds the going-in cap rate, including required Affordable Units, providing the Affordable Residential Unit(s) is/are feasible.

1. Operating expenses should not be more than the expensedata collected and regularly published within a reputable residential income property industry report for the Los Angeles area within the last 12 months.
2. Rental income should not be less than rental data collectedand produced by a reputable real estate data collection andanalysis 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.** Feasibility will be determined by return-on-cost, which is measured as follows: profit divided by total development cost. Profit is defined as net sales revenue less total development cost. Net sales revenue is defined as gross sales revenue less sales cost. The threshold for determining feasibility will be determined annually by HCIDLA, which will make the threshold publicly available. HCIDLA will utilize a consultant to determine the annual threshold for feasibility. The consultant will survey a minimum of five reputable for-sale developers and/or real estate analytical firms currently active in the Los Angeles area to assist in determining the annual threshold for feasibility.

- 1. Sales costs should not exceed five percent of gross sales proceeds.**
- 2.** Sales revenue should be not less than the sales data for buildings less than 5 years old, within one-quarter mile of theproject 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.** Mixed use projects containing residential and non-residential uses will be evaluated by deducting the portions of costs andrevenues for the non-residential uses so that only the residential portionof the project is considered in

the feasibility analysis. The remainder of the analysis will be pursuant to the applicable provisions in paragraph 9.c of this subdivision.

- f. Alternative to Comparable Data.** 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.
- g. HCIDLA's Sole Discretion.** HCIDLA retains discretion to accept, modify, or reject Applicant assumptions that differ from the above assumptions in evaluating feasibility.
- h. Requirements for Onsite and Offsite Location Analysis.** An applicant must show analysis to prove the infeasibility of providing Affordable Replacement Units to replace Affordable Units located within a single-family dwelling or duplex. Following the order below, the applicant shall prove that the previous is infeasible prior to continuing to the next option. This analysis shall be provided upon filing an appeal and the appellate body shall review and make findings to approve or deny the appeal. The offsite analysis shall not apply to Affordable Replacement Units replacing Affordable Units located in Multi Family or Unified Development Properties containing 3 or more units, nor shall it apply to Inclusionary Units.
- 1. Option 1 – Onsite.** If a Replacement Unit ~~or Inclusionary Unit~~ cannot feasibly be located onsite, the Unit shall be located within the Coastal Zone. All offsite units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition, and before the Certificate of Occupancy is issued for the originating project.
  - 2. Option 2 – Offsite (Coastal Zone).** If Option 1 is not feasible, the Affordable Replacement Unit shall be located within three (3) miles of the coastal zone. All offsite units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition, and before the Certificate of Occupancy is issued for the originating project.
  - 3. Option 3 – In-Lieu Fee.** If Options 1-2 are not feasible, the unit may be removed and the applicant may be charged an in lieu fee equivalent to the Fractional Fee for the square

feet of the removed unit. The in-lieu fee shall be deposited into the Coastal Housing Trust Fund.

**10. 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 Ordinance, except as otherwise stated herein.

**11. 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 publicly available and will include specific, impartial data sources consistent with these regulations and necessary for making feasibility determinations.

**12. Enforcement and Monitoring.** The following shall constitute methods the City will utilize in enforcing and monitoring compliance with the Mello Act Replacement Units and Inclusionary Residential Units produced as an outcome of the Mello Coastal Act.

**a. Covenant and Agreement.** Should an applicant be required to construct and maintain a Replacement Unit or Inclusionary unit, a covenant and agreement shall be recorded in a manner that is satisfactory to HCIDLA:

1. Covenant shall restate Affordability level and shall be observed ~~for a minimum of 55 years~~ in perpetuity 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.
3. The length of the Affordable Housing covenant and agreement is subject to change consistent with State Law or as updated by City Affordable Housing covenant requirements.
4. The applicant shall submit a fee payment at the time of submission of the covenant and

agreement application to HCIDLA, pursuant to Section 19.14 of the Los Angeles Municipal Code, to HCIDLA.

- b. 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. In addition to ensuring compliance with the AHPP, the bond or other financial assurance may also be used in the following situations:
1. 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.
  2. 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.
  3. HCIDLA will conduct annual monitoring of all Affordable Replacement Units and Inclusionary 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 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 described in subsection 11 of this Ordinance.
- c. Affordable Housing Linkage Fee.** Pursuant to Section 19.18 of the Municipal Code, a residential project that is subject to a greater affordable housing fee requirement or is required to provide one or more physical housing units pursuant to the Mello Act shall be exempt from the Linkage fee requirement. All other projects located in the coastal zone, Residential or Non Residential, required to pay a linkage fee, shall pay the fee to the City, which will be retained in the Coastal Zone Affordable Housing Trust

Fund.

- d. Request for Injunction.** Tenants, rental applicants, purchasers, and/or prospective purchasers of Affordable Replacement Units may seek an injunction or other legal relief to enforce the affordability criteria or to raise the affordability criteria.
- e. 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:

  - 1. The number of new Residential Units for which the City issued building permits in the Coastal Zone;
  - 2. 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;
  - 3. The number of new Inclusionary Residential Units for which construction was completed;
  - 4. The number, location, and affordability levels of Affordable Existing Residential Units approved for Demolition or Conversion;
  - 5. The number, location, and affordability levels of Affordable Replacement Units that the City required to be provided;
  - 6. The number and location of Affordable Replacement Units for which construction was completed;
  - 7. The amount of Inclusionary Residential Unit fees collected in the year; and
  - 8. Information about the expenditure of any fractional unit fees, including how and where they were committed, how and where they were spent, how many units were created, and at what affordability levels.

## SECTION 2

A new Chapter 187 is added to Division 5 of the AdministrativeCode to read as follows:

### Chapter 187

#### Coastal Zone Affordable Housing Trust Fund

##### Section 5.593. **Creation and Administration of the Fund.**

- (a) There is hereby created and established within the Treasury of

the City of Los Angeles a special fund to be known as the "Coastal Zone Affordable Housing Trust Fund" (the "Fund").

- (b) The purpose of the Fund shall be the receipt, retention and disbursement of in-lieu fees collected by the City pursuant to Section 12.21.H. of the Los Angeles Municipal Code. The Fund shall be used for the development of new affordable dwelling units in the Coastal Zone portions of the City.
- (c) The Los Angeles Housing and Community Investment Department shall administer the Fund in accordance with Los Angeles Municipal Code Section 12.21.H. and established City practices for administering trust funds.
- d) The Los Angeles Housing and Community Investment Department shall collect In-Lieu Fees required along with all Affordable Housing Linkage Fees collected from all projects, residential, commercial, and residential, proposed to be developed and constructed in the Coastal Zone pursuant to LAMC 19.18, to be collected and deposited into the Fund pursuant to Los Angeles Municipal Code Section 12.21.H and remit all such fees/funds to the Treasurer for deposit into the Fund.
- (e) Fees collected from projects are to be deposited in sub accounts corresponding to their location as follows: Pacific Palisades (a portion of the Brentwood-Pacific Palisades Coastal Zone areas); Venice (a portion of the Venice, Palms-Mar Vista-Del Rey, and Westchester-Playa del Rey Coastal Zone areas); San Pedro (a portion of the San Pedro Coastal Zone areas), and Wilmington (a portion of the Wilmington-Harbor City Coastal Zone areas).
- (f) All monies from the Fund shall be expended for the purposes set forth, and subject to the provisions and limitations expressed in Los Angeles Municipal Code Section 12.21.H. Expenditures shall be authorized by the Executive Manager of the Los Angeles Housing and Community Investment Department or his/her designees.
- (g) Expenditures are limited to those projects that will result in the development of new affordable dwelling units within the same general location the fees were generated from; fees generated from the Palisades area can only be used for new Palisades area affordable units, fees generated from Venice-area projects can only be used for new Venice- area affordable units, and fees generated from San Pedro-area projects can only be used for new San Pedro-area affordable units.
- (g) The Fund shall be interest bearing. Interest and any other earnings attributable to monies in the Fund shall be credited to the Fund and devoted to the purposes of the Fund.

- (h) Monies not expended from the Fund at the close of any fiscal year shall not revert to the Reserve Fund, but shall remain in the Fund.
- (i) Monies shall be committed within two years of collection and spent within four years of collection.

SECTION 3            The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

SECTION 4            Severability

If any provision of this article is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this article which can be implemented without the invalid provisions, and to this end, the provisions of this article are declared to be severable. The City Council hereby declares that it would have adopted this article and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.