



CITY COUNCIL AGENDA REPORT

MEETING DATE: MARCH 4, 2014

ITEM NUMBER:

SUBJECT: CODE AMENDMENT C0-13-04 – SMALL LOT SUBDIVISION ORDINANCE

DATE: FEBRUARY 18, 2014

FROM: DEVELOPMENT SERVICES DEPARTMENT – PLANNING DIVISION

FOR FURTHER INFORMATION CONTACT: GARY ARMSTRONG, AICP, Economic and
Development Services Director / Deputy CEO,
714-754-5182 - gary.armstrong@costamesaca.gov

RECOMMENDED ACTION

Recommend that City Council approve and give first reading of an ordinance adding new regulations for small lot subdivisions in multiple family residential zones and urban plan areas.

BACKGROUND

On September 10, 2013, a study session was held with the City Council and Planning Commission that was attended by the public and homebuilders. Staff was directed to prepare a “Small Lot Subdivision” ordinance with photos of potential development for consideration by Planning Commission.

On December 9, 2013, and January 27, 2014, the Planning Commission held public hearings to review the draft ordinance and recommended that the City Council adopt the ordinance as drafted. The proposed ordinance is not intended to increase the density in any of the multiple family residential zones, modify the minimum requirement for parking spaces, or change the approval process for small subdivisions.

A full discussion of the background information was included in the December 9th staff report available at the following link:

<http://www.costamesaca.gov/ftp/planningcommission/agenda/2013/2013-12-09/PH-9.pdf>

ADDED REVISIONS

Since the Planning Commission hearing, new proposals for subdivision of single narrow lots in R2-MD zone with two parcels taking direct access from the street were proposed by developers. This configuration typically referred to as “flag lot” is generally discouraged in single family residential (R1) district and creates a long narrow driveway for vehicles to back out in order to reach the street. The following criteria will be applicable to flag lots:

- The existing requirement for a maximum back out length of 100 feet and providing an on-site turnaround space per Parking Design Standards.
- Minimum lot width of 20 feet
- 50% maximum front yard hardscape
- Adequate distance between driveways
- ADA approved drive aprons.

Current Requirements - Common Interest Development

The City currently has regulations in place for residential subdivisions referred to as “Common Interest Development Standards.” Common Interest Developments are permitted in all multi-family residential zoning districts. The standards include various provisions such as requirement of a common lot (typically a landscape street setback and common drive), minimum lot size and average lot size standards, as well as regulations related to formation of a homeowners association. The current requirements are applicable to both detached and attached products. While these standards have been practical for larger developments; they have been challenging for smaller subdivisions. Most small subdivisions require approval of several variance and administrative adjustments to allow development of small detached units on small lots. The following is a list of development standards and required documents that are proposed to be revised with the proposed Small Lot Subdivision Ordinance:

- *Common lot requirement* - The current common interest development standards require that all projects be designed with a minimum of one common lot, in common ownership and maintained by a homeowners association. This lot is required to contain common driveways, parking areas, and the front 10 feet of the landscaped street setback.
- *Minimum distance between buildings* - A 10-foot minimum between main buildings and a 6-foot minimum separation between main buildings and accessory structures is required.
- *Minimum open space* - All subdivisions are required to provide a minimum 40% of total lot area as open space. Open space excludes driveways and common hardscape areas. In addition, each individual lot is required to provide a minimum of 400 square-foot private open space area with no dimension less than 15 feet.
- *Minimum Lot size* – The minimum lot size is 3,000 square feet with an overall average of 3,500 square feet. The required common lot is not included in the calculation of lot area.
- *Rear yard setback* – A 20- foot minimum rear setback is required for the second floor of two-story structures in medium density and a minimum 15- foot for high density zones.

Parking regulations are proposed to be revised; however, the required number of parking spaces will not be decreased. Subdivisions of four or more units are required to provide open parking spaces accessible to all residents in the community and not in front of the garages.

In addition, the Common Interest Development Standards include specific provisions with respect to maintenance requirements and homeowners associations are proposed to be revised. All subdivisions are required to record CC&Rs that would include a plan for permanent care and maintenance of open spaces, recreational areas, and common facilities pursuant to State law (Civil Code 1350-1359).

ANALYSIS

The purpose and intent of the small lot ordinance is to promote affordable ownership housing by providing more flexible development standards and maintenance mechanisms for underutilized multi-family residential lots within the densities allowed by the General Plan. This proposed code amendment will add a new section to the zoning code applicable to detached residential development of up to 15 units without modifying the current “Common Interest Development” standards. The amendment is not intended to increase the current densities or decrease the parking standards.

If adopted this will be the first of such ordinance in the County. Similar ordinances, in other jurisdictions, have not been implemented long enough to determine all the potential benefits and consequences. A few jurisdictions have adopted design guidelines related to site and building design including City of Los Angeles; in Costa Mesa, these subdivisions will be subject to discretionary process (Design review) which allows site planning and architectural review of the projects by the Planning Commission. In all cases, residential developments are subject to the City’s Residential Design Guidelines.

Proposed New Development Standards - Small Lot Subdivisions

The following includes a comparison of the existing and proposed development standards applicable to subdivisions of up to 15 dwellings. The proposed development standards are intended to allow the most flexibility in project layout and design; and maintenance requirements without any increase in density or decrease in the parking standards:

Common Interest Development Subdivisions of 16 or more units (Existing)	Small Lot Subdivisions Subdivisions of up to 15 units (New)
Common lot required – typically includes the main drive and street landscape setback	Common lot not required – common areas are divided among the individual parcels and reciprocal access and parking is provided by an easement recorded with the parcel/tract map
Minimum open space (development lot) – 40% (not including porches of over 6 feet in depth and balconies)	Minimum open space (development lot) – 30%* (includes porches, covered patios, roof decks and balconies)
Minimum open space (individual lot) - 400 square feet with no dimension less than 15 feet.	Minimum open space (individual lot) - 200 square feet with no dimension less than 10 feet. **
Minimum rear yard setback – 10 feet for one story and 20 feet for two stories	Minimum rear yard setback – all setbacks are treated as side setbacks with a minimum 10- foot separation from the property line. ***
Minimum lot size of 3,000 square feet and average lot size of 3,500 square feet; no minimum lot width	No minimum standards for lot area Minimum lot width – 20 feet ****
Maximum height – two-stories or 27 feet	Maximum height – two-stories or 27 feet maximum

maximum unless otherwise allowed by a specific plan or urban plan	unless otherwise allowed by a specific plan or urban plans.
Minimum distance between buildings – 10 feet	No minimum distance required as long as the structures are completely separated, do not share a common wall, and meet Building and Fire Code standards.
Homeowner’s association required	City will require that the homeowners be responsible for maintenance of all areas subject to access and/or maintenance easements (i.e., access, drainage and utilities, and landscape setbacks) and carry insurance policies for the homeowners. A maintenance agreement can be executed for subdivision of 4 or less in lieu of requiring an association when each unit has an independent access to the public street and there is no common drive or other amenities.
Covenants, Conditions, and Restrictions (CC&Rs) – required to be recorded prior to final inspection	Covenants, Conditions, and Restrictions (CC&Rs) – required to be recorded prior to final inspection

** Decorative paving will be required for all interior roadways and parking to balance the reduction in open space.*

*** The private open space area is included in the overall open space calculations*

**** Under special circumstances deemed appropriate by Development Services Director, the setback can be reduced to 5 feet. Those include but are not limited to: setbacks abutting permanent open space, setbacks containing landscaping in common open space areas maintained by maintenance association, superior site and architectural designs that provide a variety of off-sets and additional articulation to side elevations.*

***** Flag lots are subject to maximum back out and turn around requirements of the Parking Design Standards, minimum distance between driveways and ADA requirements.*

It should be noted that the threshold for the maximum number of parcels (15 parcels under small lot subdivision) was proposed based on a typical lot size in R2-MD zone and a manageable development without a homeowners association; this is an arbitrary number and can be modified as City Council deem appropriate.

Homeowners and Maintenance Associations

With the cost of homeownership rising, developers are proposing an alternative mechanism for maintenance of small lot subdivisions that will reduce the monthly cost to the homeowners and reduce the administrative requirements of a subdivision. The proposed development standards would in certain circumstances allow the developer to establish either the traditional Homeowner Association (HOA) or Maintenance Association (MA). While a Homeowner Association may be the best alternative for most subdivisions, to provide compliance with the requirements of Davis-Stirling Act (i.e., 10-year homebuilder warranty and lien rights); in cases where there is no common area and where permissible under state law, a Maintenance Association could be a less costly alternative. In either alternative the City would require recordation of CC&Rs to ensure a certain level of maintenance standards and enforcement procedures.

The following is a comparison of the two alternative types with respect to maintenance and regulatory standards:

Applicable Regulations	Common Interest Development HOA	Small Lot Subdivision
Davis Stirling Act requirement for HOA to manage	Yes	No. Common interest developments could be exempt but determination of applicability is left to Developer. City will establish minimum maintenance standards for small lot subdivisions that associations will be responsible to maintain.
Business & Professions Code Public Reporting Requirements (public documents)	Yes	No, if less than 5 units. However determination of applicability is left to Developer.
CC&Rs	Yes	Yes
Lien Rights	Yes	No
Common areas Reciprocal Easements, etc.	Yes	Yes/No
Budget	Required by BRE	Advisable but not required
Standard of Maintenance	Required by BRE	Advisable but not required
Conditions of Approval	Yes	Yes
Dispute Resolution	Maybe subject to arbitration	Maybe subject to arbitration
Construction Defects	Subject to Davis Stirling – builder is liable for 10 years	Unknown - subject to litigation*

* Homeowner and maintenance associations have the right to sue others as one entity; however, individual homeowners not part of a HOA or maintenance association would have to sue as individuals.

Common interest developments with a common lot are required to submit public reports to BRE and provide certain disclosures to the homebuyers under the Business & Professions Code. Small lot subdivisions under 5 parcels may avoid these requirements. However, staff is recommending establishing a minimum standard of disclosure by the developers prior to entering into sales agreement with the potential homebuyers for the sale of properties within a small lot subdivision, even if the developer is exempted from disclosure requirements under state law. These requirements are noted below and included in the draft ordinance under Section 13-42.2 (c).

- The type, thickness, and R-value of the insulation installed in the home
- Any potential hazards or lead-based paint (24 CFR Part 35 and 40 CFR Part 745)
- Uses other than residential and any unusual zoning in proximity to the project
- Distance to airport if within two miles
- Any special costs that will be incurred by the buyer as a result of the installation of a building foundation or any other construction due to unusual soil/geological conditions
- If there is fill in excess of 2 feet
- Schools serving the subdivision and any special conditions
- Any unusual flooding conditions
- Conditions of approval by the City and any resale restrictions
- Dedications and easements
- Project phasing plan
- CC&Rs

PUBLIC NOTICE

Code requires publication of a display AD in the local newspaper (Daily Pilot) for Title 13 Code Amendments. At the time of publication of this report, no public comments have been received. Any correspondence will be forwarded to the City Council under separate cover. In addition to the newspaper ad, homeowners associations and other neighboring cities and government agencies were notified by mail.

ENVIRONMENTAL DETERMINATION

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

FISCAL REVIEW

The proposed ordinance is not likely to have any direct fiscal impact.

LEGAL REVIEW

The City Attorney has reviewed this report and its attachments and has been approved as to the form by the City Attorney's Office.

CONCLUSION

Given the request from local developers and the City's desire to stimulate for sale housing development in the City, the Planning Commission recommended approval of the ordinance. The following summarizes key aspects of the proposed ordinance.

- Small lot ordinance would be applicable to all multi-family residential zoning districts and urban plan residential development and live/work projects.
- Would apply to development of 15 units or less.
- While all small lot subdivision would be subject to CC&Rs, small subdivisions of up to four parcels with no common areas could be exempt from a homeowner's or maintenance association and subject to only a maintenance agreement.
- Small lot subdivision will allow development within the allowed densities of the zoning code and general plan.
- The small lot ordinance would not reduce the required parking.

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Director

Distribution: Chief Executive Officer
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Public Services Director
City Attorney
Transportation Services Manager
City Engineer
City Clerk (9)
Staff (7)
File (2)

Attachments: [1. Draft Ordinance](#)
[2. Other California Cities with adopted small lot ordinance](#)
[3. Draft Standard Conditions of Approval](#)
[4. Examples of recent projects](#)



CITY COUNCIL

SUPPLEMENTAL REPORT

MEETING DATE: MARCH 4, 2014

ITEM NUMBER: PH-1

SUBJECT: CODE AMENDMENT CO-13-04 – SMALL LOT SUBDIVISION ORDINANCE (CITY WIDE)

DATE: FEBRUARY 28, 2014

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MINOO ASHABI, PRINCIPAL PLANNER

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI (714) 754-5610
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The purpose of this supplemental report is to provide additional information, from the administrative record, at the request of Councilmember Genis.

Attached are the Planning Commission Staff Report meeting minutes from the public hearings that took place on December 9, 2013 and January 27, 2014.

- Attachment: 1. Planning Commission Staff Report and minutes, December 9, 2013
2. Planning Commission Staff Report and minutes, January 27, 2014

cc: Chief Executive Officer
Assistant Chief Executive Officer
Director of Economic & Development/Deputy CEO
Public Services Director
City Attorney
Transportation Services Manager
City Engineer
City Clerk (9)
Staff (7)
File (2)



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: DECEMBER 9, 2013

ITEM NUMBER: PH-9

SUBJECT: CODE AMENDMENT C0-13-04 – SMALL LOT SUBDIVISION ORDINANCE

DATE: NOVEMBER 12, 2013

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MINOO ASHABI, PRINCIPAL PLANNER

**FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, AIA (714) 754-5610
minoo.ashabi@costamesaca.gov**

DESCRIPTION

Code Amendment CO-13-04 is a zoning code amendment to add new regulations for small lot subdivisions in multiple family residential zones which involves amending Title 13, the Zoning Code as follows:

- Chapter I – Add new definitions related to small lot subdivisions;
- Chapter IV, Table 13-30 (Land Use Matrix) – Allowing small lot subdivisions of up to 15 dwelling units in multiple family residential zones;
- Chapter V, Article 2.5 – add new development standards for small lot subdivisions.

RECOMMENDATION

Staff recommends that the Planning Commission:

- Recommend that the City Council approve the ordinance and give first reading.

OR

- Continue the item to January 13, 2014 and provide direction to staff.

BACKGROUND

Historic background – Regional

Common interest developments, commonly referred to as CIDs, date back to the mid 19th century but it wasn't until the 1960's that CID's really begin to take off as developers begin to engage in mass scale housing developments. By creating commonly owned parcels, developers could decrease individual lot sizes while simultaneously adding low cost amenities such as parks, tennis courts, pools, etc. This kept the housing affordable in the face of a shortage of land in suburban areas. In 1962 a FHA study found only 470 subdivisions had commonly owned property maintained by HOA's and was almost exclusively found in affluent neighborhoods. The same study done in 1994 found 130,000 nationwide and that 90% of all new development was CID.

California public agencies quickly realized the benefit in encouraging the use of CIDs and HOA's to promote the construction and maintenance of public infrastructure. This became particularly helpful in addressing the growing need for public infrastructure under the newly passed Proposition 13 which significantly limited a local agencies ability to raise revenue to fund such public infrastructure. Developers have incentive to continue to build parks and other infrastructure and can provide for ongoing maintenance through the creation of an HOA. An example of public facilities which can and have been constructed and maintained through HOAs include utility services, road maintenance, street and common area lighting, refuse removal, security services, and open spaces.

In 1984, the State legislature passed the Davis-Stirling Act to create a unified statutory framework for the regulation of all CIDs in the state. While Davis-Stirling continues to evolve, it is recognized that the regulations outlined in the Davis-Stirling Act may not fit every situation. Testimony before the State Senate Housing and Land Use Committee has noted the lack of flexibility within Davis Stirling. Davis-Stirling treats a thousand-unit development the same as a 3 unit development which only shares a sidewalk. As one example, both developments have the same financial reporting requirements. The costs of such requirements has significantly less impact on affordability when spread over 1,000 units as opposed to spreading the same cost over 3 units.

In 2009, the City of Los Angeles, like most cities, was suffering from declining property values and a significant drop in new home construction. When the economy began to recover, tight lending standards severely stalled new construction despite significant increase in population. The city of LA enacted a small lot ordinance which allowed developers to build on lots which were underutilized and utilized a maintenance association instead of an HOA with accompanying fees (Attachment 2).

City of Costa Mesa

The City of Costa Mesa is experiencing an uptick in housing developments, mostly in proposals with detached units. During the past couple of years, there has been little demand in the City of Costa Mesa for condominium development with common areas and the City has approved only a few condominium projects. Instead, most housing projects involved condominium subdivisions or fee simple lots with individual units designed as townhomes or completely detached with attached garages and driveways similar to traditional single family detached products.

Application of existing Common Interest Development requirements to the development of small lots has resulted in a number of requested variances or deviations from current standards such as the common lot. In addition, City staff has been approached by multiple developers requesting more flexibility in the development standards to facilitate construction of marketable detached products at affordable pricing. These residential units typically include three bedrooms and range in size from 1,600 square feet to 2,000 square feet of living area. Small lot developments are fee-simple units that increase homeownership opportunities while working within existing land use designations.

City Council Study Session

On September 10, 2013, a study session was held with the City Council and Planning Commission that was attended by the public and homebuilders. Staff was directed to prepare a "Small Lot Subdivision" ordinance with photos of potential development for consideration by Planning Commission.

The following issues were discussed at the study session:

- *Advantage / disadvantages of a homeowners association (HOA) versus a maintenance association.* Council questioned the difference between a maintenance association and a traditional homeowners association.

A maintenance association is desirable by some builders and homebuyers since a maintenance association need not be approved by the Bureau of Real Estate (BRE) and is not subject to some requirements of the Davis-Stirling Act and/or Business and Professions Code. Davis-Stirling requires common-interest developments to be managed by an HOA. Additionally, the Business and Professions Code exempts subdivisions with less than five parcels from public reporting requirements. Enacting an ordinance requiring the developer to form an association for maintenance of areas subject to access and/or maintenance easements will potentially reduce the developer's administrative costs and the monthly dues for homeowners. It should be noted that the applicability of the HOA and exemption there from is a function of state law and is not determined by the City. The City is only providing a minimum standard for Developers. Determination of the applicability of all state laws is left to the Developer. Based on staff's research, the maintenance association could be a viable option for smaller subdivisions with no common areas; however, maintenance associations do impose more risks for larger subdivisions with common areas such as driveways, landscape setbacks, drainage facilities, etc, which would affect the homeowners as well as the City. In addition, a maintenance association can not legally have lien rights and therefore must rely on private enforcement if a dispute arises between the homeowners. However, the City could additionally impose a requirement to hire a third party to handle the maintenance and/or to facilitate enforcement. Additionally, maintenance associations may still incorporate, similar to HOAs, which would require establishing a reserve and carrying insurance policies for any liabilities. This will assure the City of maintenance of common areas and the homeowners with the insurance protection. In all cases, the City has the authority to enforce maintenance standards as with any other residential development in the City. Please refer to the analysis for additional information on this issue.

- Parking standards. Council expressed concerns with the impacts of new development on neighboring site and street parking and noted that required parking should not be modified.

The Zoning Code does not specify parking standards for detached units other than single family units. The single family residential parking standards have been typically applied to detached units in common interest developments. For units with three bedrooms or more, a two-car garage and two open parking spaces are required. For smaller two bedroom units, the multiple family parking standards are applied that require three parking spaces per unit, with a minimum of one covered or garage space.

Traditional subdivisions are designed with two car garages and two parking spaces in front of the garage, typically used by the same resident or their guests. Council suggested providing additional communal/ guest parking instead of parking in individual driveways that would not be practical for common guest parking. Common interest developments and the small lot subdivisions typically have an internal street system with no parking opportunities leading to overflow guest parking on public streets, many of which are already impacted in most areas of the City. Consequently, staff is recommending a new parking standard; please refer to the analysis for additional information on this issue.

The Council also questioned how the use of garages would be regulated with small lot subdivisions and whether these developments would be subject to CC&Rs. Both common interest development and small lot subdivisions will be subject to CC&Rs that will need to include provisions for use of private garages as well as open guest parking. Please refer to the analysis for additional information on this issue.

Current Requirements - Common Interest Development

The City currently has regulations in place for residential subdivisions referred to as “common interest development standards.” Common Interest Developments are permitted in all multi-family residential zoning districts. The standards include various provisions such as requirement of a common lot (typically a landscape street setback and common drive), minimum lot size and average lot size standards, as well as regulations related to formation of a homeowners association. The current requirements are applicable to both detached and attached products. While these standards have been practical for larger developments; they have been challenging for smaller subdivisions. Most small subdivisions require approval of several variance and administrative adjustments to allow development of small detached units on small lots. The following is a list of development standards and required documents that are proposed to be revised with the proposed Small Lot Subdivision Ordinance:

- *Common lot requirement* - The current common interest development standards require that all projects be designed with a minimum of one common lot, in common ownership and maintained by a homeowners association. This lot is required to contain common driveways, parking areas, and the front 10 feet of the landscaped street setback.
- *Minimum distance between buildings* - A 10-foot minimum between main buildings and a 6-foot minimum separation between main buildings and accessory structures is required.

- *Minimum open space* - All subdivisions are required to provide a minimum 40% of total lot area as open space. Open space excludes driveways and common hardscape areas. In addition, each individual lot is required to provide a minimum of 400 square-foot open space area with no dimension less than 15 feet.
- *Minimum Lot size* – The minimum lot size is 3,000 square feet with an overall average of 3,500 square feet. The required common lot is not included in the calculation of lot area.
- *Rear yard setback* – A 20- foot minimum rear setback is required for the second floor of two-story structures in medium density and a minimum 15- foot for high density zones.
- *Parking Standards* – Two garage spaces and two open parking spaces per unit (up to four bedrooms). Two bedroom units are required to provide a total of three spaces including one covered or garage spaces.

In addition to the noted standards, the Common Interest Development Standards include specific provisions with respect to maintenance requirements and homeowners association. All subdivision are required to form a homeowners associations and recordation of CC&Rs that would include a plan for permanent care and maintenance of open spaces, recreational areas, and common facilities pursuant to State law (Civil Code 1350-1359).

ANALYSIS

The purpose and intent of a small lot ordinance is to promote affordable ownership housing by providing more flexible development standards and maintenance mechanisms for underutilized multi-family residential lots within the densities allowed by the General Plan. This proposed code amendment will add a new section to the zoning code applicable to detached residential development of up to 15 units without modifying the current “Common Interest Development” standards. The amendment is not intended to increase the current densities or decrease the parking standards.

Proposed New Development Standards - Small Lot Subdivisions

The following includes a comparison of the existing and proposed development standards applicable to subdivisions of up to 15 dwellings. The development standards are proposed to allow the most flexibility in development standards and maintenance requirements without any modifications to the density and parking requirements:

Common Interest Development Subdivisions of 16 or more units (Existing – No Change)	Small Lot Subdivisions Subdivisions of up to 15 units (New)
Common lot required – typically includes the main drive and street landscape setback	Common lot not required – common areas are divided among the individual parcels and reciprocal access and parking is provided by an easement recorded with the parcel/tract map
Minimum open space – 40% (not including porches of over 6 feet in depth and balconies)	Minimum open space – 30% (includes porches and balconies)*
Minimum rear yard setback – 10 feet for one story and 20 feet for two stories	Minimum rear yard setback – all setbacks are treated as side setbacks with a minimum of 5 feet

	separation from the property line. Properties abutting single family residential zones are required to provide a minimum 10-foot setback.
Minimum lot size of 3,000 square feet and average lot size of 3,500 square feet; no minimum lot width	No minimum standards for lot area Minimum lot width – 20 feet
Maximum height – two-stories or 27 feet maximum unless otherwise allowed by a specific plan or urban plan	Maximum height – two-stories or 27 feet maximum unless otherwise allowed by a specific plan or urban plans.
Minimum distance between buildings – 10 feet	No minimum distance required as long as the structures are completely separated, do not share a common wall, and meet Building and Fire Code standards.
Homeowner's association required	City will require that the homeowners be responsible for maintenance of all areas subject to access and/or maintenance easements (i.e., access, drainage and utilities, and landscape setbacks) and carry insurance policies for the homeowners. A maintenance agreement can be executed for subdivision of 4 or less in lieu of requiring an association when each unit has an independent access to the public street and there is no common drive or other amenities.
Covenants, Conditions, and Restrictions (CC&Rs) – required to be recorded prior to final inspection	Covenants, Conditions, and Restrictions (CC&Rs) – required to be recorded prior to final inspection

* *Decorative paving will be required to compensate for the reduction in open space.*

Homeowners and Maintenance Associations

With the cost of homeownership rising, developers are proposing an alternative mechanism for maintenance of small lot subdivisions that will reduce the monthly cost to the homeowners and reduce the administrative requirements of a subdivision. While a condominium association may be the best alternatives for most subdivisions by providing more certainty with the requirements of Davis-Stirling Act (i.e., 10-year homebuilder warranty and lien rights), in cases where there is no common area and where permissible under state law, a maintenance association could be a less costly alternative. In either alternative the City would require recordation of CC&Rs to ensure a certain level of maintenance standards and enforcement procedures.

The following is a comparison of the two alternative types with respect to maintenance and regulatory standards:

Applicable Regulations	Common Interest Development HOA	Small Lot Subdivision
Davis Stirling Act requirement for HOA to manage	Yes	No. Common interest developments could be exempt but determination of applicability is left to Developer. City will establish minimum standards for small lot subdivisions that association must be

		responsible to maintain certain areas. City association standard may be waived for developments with less than 5 units.
Business & Professions Code Public Reporting Requirements (public documents)	Yes	No, if less than 5 units. However determination of applicability is left to Developer.
CC&Rs	Yes	Yes
Lien Rights	Yes	No
Common areas Reciprocal Easements, etc.	Yes	Yes/No
Budget	Required by BRE	Advisable but not required
Standard of Maintenance	Required by BRE	Advisable but not require
Conditions of Approval	Yes	Yes
Dispute Resolution	Maybe subject to arbitration	Maybe subject to arbitration
Construction Defects	Subject to Davis Stirling – builder is liable for 10 years	Unknown - subject to litigation*

* Homeowner and maintenance associations have the right to sue others as one entity; however, individual homeowners not part of a HOA or maintenance association would have to sue as individuals.

It should be noted that common interest developments with a common lot are required to submit certain public reports to BRE and providing certain disclosures to the homebuyers under the Business & Professions Code. Small lot subdivisions under 5 parcels may avoid these requirements. However, staff is recommending establishing a minimum standard of disclosure by the developers prior to entering into sales agreement with the potential homebuyers for the sale of properties within a small lot subdivision, even if the developer is exempted from disclosure requirements under state law. These requirements are noted below and included in the draft ordinance under Section 13-42.2 (c).

- The type, thickness, and R-value of the insulation that has been installed in the home
- Any potential hazards or lead-based paint (24 CFR Part 35 and 40 CFR Part 745)
- Uses other than residential and any unusual zoning in proximity to the project
- Distance to airport if within two miles
- Any special costs that will be incurred by the lot buyer as a result of the installation of a building foundation or any other construction due to unusual soil/geological conditions
- If there is fill in excess of 2 feet
- Schools servicing subdivision and any special conditions
- Any unusual flooding conditions
- Conditions of approval by the City and any resale restrictions
- Dedications and easements
- Project phasing plan
- CC&Rs

Survey of Other Jurisdictions

In addition to city of Los Angeles, a number of local jurisdictions (see below) in northern and central California have adopted a small lot subdivision ordinance.

Local Jurisdiction	Summary of Small Lot Subdivision Program
Los Angeles, CA	<ul style="list-style-type: none"> • Allowed in multi-family and commercially zoned properties. • Minimum lot area, 600 sq. ft. and minimum lot width, 12 feet • 80 percent lot coverage • Design Guidelines address site planning, building design, and materials. • No discretionary review required
Marysville, CA	<ul style="list-style-type: none"> • Allows minimum lot size of 3,000 sq. ft. in designated areas.
Merced, CA	<ul style="list-style-type: none"> • Allowed in Planned Development zones. • Minimum lot area 1,950 sq. ft. and 3,000 sq. ft. • Two sets of design guidelines based on lot width and area. • Sixty percent lot coverage
Modesto, CA	<ul style="list-style-type: none"> • Allowed in specific plan areas and planned development zones • Design guidelines for lot areas of 5,000, 3,000 and less than 3,000 sq. ft. • Requires discretionary review
Napa, CA	<ul style="list-style-type: none"> • Permitted in single family residential zones that allow single family and duplex • No minimum lot area and width requirement • Subject to approval of a conditional use permit
Oakland, CA	<ul style="list-style-type: none"> • Minimum lot area of 4,000 sq. ft. and minimum lot width of 25 feet • Subject to approval of a conditional use permit
Santa Rosa, CA	<ul style="list-style-type: none"> • Allowed in single-family and multi-family zones. • Minimum lot area of 2,000 sq. ft. and density of 18 du/acre • Subject to approval of a conditional use permit

Advantages of Establishing a Small Lot Ordinance

The following are several reasons why small lot developments would be beneficial for residential development in the City:

- Small Lot Subdivision Ordinance could promote a new housing type and encourage first time homebuyers. There is a target market of new homebuyers who do not wish to purchase a condominium but are unable to qualify for a traditional single-family residence. Small lot developments are fee-simple (house and lot owned by homeowner) units that increase homeownership opportunities while working within existing land use designations. Because these units are fee-simple, homeowners acquire ownership of the housing structure, as well as the land on which it is built.
- Small lot developments do not have common ownership. Under the Davis Stirling Act common interest developments must be managed by a HOA. With the elimination of the City's common lot requirement, the development will most likely not be considered a common-interest development subject to management by a HOA. Determination of the applicability of state law requirements will be left to the Developer.
- Small lot developments could increase housing production. Although small lot subdivisions will still be subject to design review and a subdivision map requirements, the more flexible standards will eliminate the lengthy entitlement process with multiple variances

and adjustments. This could encourage redevelopment of marginal and underutilized parcels in the City.

- Subdivision with no common lots or less than five parcels are not subject to Public Reporting Requirements. Eliminating the requirement to provide a common lot would exempt developers of four lots or less from the state law requirement of BRE review and approval which is a lengthy and costly process. Public Reporting requirements would still be applicable to larger developments. Determination of the applicability of state law requirements will be left to the Developer.

GENERAL PLAN CONFORMITY

The proposed ordinance is consistent with the following goals and policies of the General Plan:

- LU -1 A.1, LU -1A.4, LU -10.4, HOU -1.9, HOU -2.4, HOU -4.4, CD -7A.1 and CD -7A.2.

PUBLIC NOTICE

Code requires publication of a display AD in the local newspaper (Daily Pilot) for Title 13 Code Amendments. At the time of publication of this report, no public comments have been received. Any correspondence will be forwarded to the Planning Commission under separate cover. In addition to the newspaper ad, all property owners within PDI zoning, homeowners associations and other neighboring cities and government agencies were notified by mail.

ENVIRONMENTAL DETERMINATION

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

LEGAL REVIEW

The staff report and the draft ordinance has been reviewed and approved by the City Attorney.

CONCLUSION

Given the request from local developers and to stimulate housing development in the City, staff believes there is policy support for the creation of innovative programs to increase housing development and home ownership opportunities within the allowed densities of the City's General Plan. The following summarizes a few facts with adoption of the ordinance.

- If adopted this will be the first of such ordinance in the County. The examples of other jurisdictions provided have not been implemented long enough, therefore all the benefits and consequences are not known;
- Small lot subdivision would be under a new section in the zoning code applicable to subdivision of 15 or fewer lots.

- A few jurisdictions have adopted design guidelines related to site and building design including City of Los Angeles; however, in Costa Mesa, these subdivisions will be subject to discretionary process (Design review) which allows site planning and architectural review of the projects. Design guidelines are a helpful tool; however, may not be necessary. In all cases, residential developments are subject to the City's Residential Design Guidelines.
- Small lot ordinance would be applicable to all multi-family residential zoning districts and urban plan residential and live/work projects.
- While all small lot subdivision would be subject to CC&Rs, small subdivisions of up to four parcels with no common areas could be exempt from a homeowner's or maintenance association and subject to only a maintenance agreement.
- Small lot subdivision will allow development within the allowed densities of the zoning code and general plan.



MINOO ASHABI, AIA
Principal Planner



GARY ARMSTRONG, AICP
Economic & Development Services Director/
Deputy CEO

Distribution: Director of Economic & Development / Deputy CEO
Senior Deputy City Attorney
Public Services Director
City Engineer
Transportation Services Manager
Fire Protection Analyst
Staff (6)
File (2)

Attachments: 1. Draft Ordinance
2. City of Los Angeles Small Lot Ordinance
3. City of Los Angeles Design Guidelines
4. Examples of recent projects
5. Example of a Covenant/ Maintenance Agreement

ORDINANCE NO. 13

AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-13-04 AMENDING TITLE 13, CHAPTERS I, IV, AND V RELATED TO DEFINITIONS, LAND USE MATRIX AND NEW ARTICLE 13-42

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: FINDINGS.

City of Costa Mesa recognizes that homeownership is an important aspect of community building. The City of Costa Mesa is promoting homeownership by providing the opportunity for development of a variety of housing types at various price ranges. The small lot ordinance will allow development of detached or townhome style residential units on individual parcels instead of condominium ownership.

SECTION 2: Title 13 of the Costa Mesa Municipal Code is hereby amended as follows:

A. Chapter I; definitions:

Small Lot Subdivision. A residential development containing a maximum of 15 detached or townhome style units with no common walls where each unit is independently constructed on an individual parcel and the land is subdivided into fee simple parcels containing each unit.

B. Chapter IV; Table 13-30, Citywide Land Use Matrix:

Add Small Lot Subdivisions as Land Use No. 2.2 to Table 13-30 as permitted use in multi-family residential zones.

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX																					
LAND USES	ZONES																				
	R1	R2 M D	R2 H D	R3	A P	C L	C 1	C 2	C 1 S ¹	T C ¹	M G	M P	P D R L D ¹	P D R M D ¹	P D R H D ¹	P D R N C M ¹	P D C ¹	P D I ¹	I & R ¹	I & R ¹ S ¹	P
RESIDENTIAL USES																					
1. Single-family dwellings (single housekeeping units)	P ⁴	P	P	P	•	•	•	•	•	•	•	•	P	P	P	P	P	P	•	•	•
2. Multi-family dwellings	•	P	P	P	•	•	•	•	•	P	•	•	P	P	P	P	P	P	•	•	•
2.1 Common interest developments, residential	•	P	P	P	•	•	•	•	•	P	•	•	P	P	P	P	P	P	•	•	•
2.2 Small lot subdivisions, residential	•	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
3. Mobile home parks	•	C	C	C	•	•	•	•	•	•	•	•	C	C	C	C	C	C	•	•	•

C. Chapter V, Article 2.5. RESIDENTIAL SMALL LOT SUBDIVISION

ARTICLE 2.5 RESIDENTIAL SMALL LOT SUBDIVISIONS

SECTION 13-42.1 PURPOSE

The purpose of this article is to regulate development and subdivision of small lots within residential zoning districts and overlay districts where residential and live/work projects are permitted. The ownership and occupancy of these developments shall be subject to applicable laws for the general health, safety and welfare of the public. This type of subdivision is intended to provide flexible development standards and to promote a wider range of homeownership of individual lots in multiple-family residential and overlay zoning districts.

SECTION 13-42.2 PLANNING APPLICATION REQUIRED

- a) Small lot subdivisions are permitted in appropriate residential or urban plan overlay districts, subject to approval of the following planning application as may be applicable. This requirement is in addition to other permits or certificated required by law.
 - 1) All new small lot development projects shall be processed according to the design review procedures contained in Chapter III, Planning Applications.
 - 2) All small lot development projects require approval of a tentative tract or parcel map as required by law.
 - 3) A tentative tract map or parcel map shall not be required until either a design review or has been approved; however, the map may be processed concurrently.
- b) No person shall construct, sell, lease, convey, maintain or use a lot in a small lot subdivision project within the City without first complying with the provisions of this article.

SECTION 13-42.3 DEVELOPMENT STANDARDS AND REQUIREMENTS:

- a) **Applicability.** The provisions of this section shall apply to all new residential small lot subdivisions of 15 lots or less in multi-family zones and overlay zones where residential and live/work development are permitted.
- b) **Development standards.** Table 13-42 identifies the development standards for small lot subdivision developments. See also ARTICLE 9 GENERAL SITE IMPROVEMENT STANDARDS of this chapter for additional requirements. Projects shall comply with all applicable standard plans and specifications and adopted City and State codes, as well as the following provisions:
 - 1. The location and orientation of all buildings shall be designed and arranged to preserve natural features by minimizing the disturbance to the natural environment. Natural features such as trees, groves, waterways, scenic points, historic spots or landmarks, bluffs or slopes shall be delineated on the site plan and considered when planning the location and orientation of buildings, open

spaces, underground services, walks, paved areas, playgrounds, parking areas and finished grade elevations.

2. All structures proposed to be constructed within a project shall conform to the following requirements:
 - a. Each unit shall be provided with direct vehicular access to a public street, or an alley or a common drive connecting to a public street/ alley.
 - b. Structures having dwelling units attached side by side shall be composed of no more than 4 dwelling units.
 - c. Structures having dwelling units attached side by side shall include a break in the facade by having an offset in the front building line.
 - d. Structure shall be constructed to minimize impact of the proposed development on the light, air and privacy of adjacent properties.
3. On-site lighting shall be provided in all parking areas, vehicular access ways, and along major walkways. The lighting shall be directed onto driveways and walkways within the project and away from dwelling units and adjacent properties, and shall be of a type approved by the Development Services Department.
4. The development shall comply with the provisions of CHAPTER XI. SUBDIVISIONS, which may include, but are not limited to, land dedication and improvements, such as drainage improvements and payment of fees.
5. Outside uncovered and unenclosed storage of boats, trailers, recreational vehicles and other similar vehicles shall be prohibited unless specifically designated areas for the exclusive storage of such vehicles are set aside on the final master plan and provided for in the covenants, conditions, and restrictions. Where such areas are provided, they shall be enclosed and screened from view on a horizontal plane from adjacent areas by a combination of 6-foot high opaque fences and permanently maintained landscaping.

**TABLE 13-42
SMALL LOT SUBDIVISION STANDARDS**

STANDARDS	SINGLE-FAMILY UNITS (located on individual dwelling unit lots and excluding townhouses)
Maximum Number of Stories & Building Height	2 stories/ 27 feet, except as allowed in the Westside Overlay Districts. Note: Lofts, as defined in section 13-6, without exterior access and having only clerestory windows will not be regarded as a story. See also Attic discussion below.
Attics	Attics shall not be heated or cooled, nor contain any electrical outlets or operable windows. In zoning districts where the maximum number of stories is two stories, attics above second stories shall be an integral part of the second story roofline and not appear as a 3 rd story on any building elevation. Windows in any attic space above the second story shall be incidental and limited to a dormer style.
Maximum Density (based on gross acreage)	Same as underlying zoning district or as specified in an applicable specific plan.
Minimum Open Space	30% of total lot area. No asphalt shall be permitted for paved areas. Parking and driveways shall consist of decorative concrete, pavers or other materials as deemed appropriate by the Development Services Director.

**TABLE 13-42
SMALL LOT SUBDIVISION STANDARDS**

STANDARDS	SINGLE-FAMILY UNITS (located on individual dwelling unit lots and excluding townhouses)
Development Lot	Separately owned private property interests or any portion thereof, necessary or desirable for common use, are subject to recordation of an easement for reciprocal access and maintenance. All areas of a development with 5 or more parcels, subject to a reciprocal access and/or maintenance easement shall be maintained by an association that may be incorporated or unincorporated. The association may be referred to as a maintenance association.
Parking	<ul style="list-style-type: none"> • Three bedroom or more units (including a den or home office) – two garage spaces and two open parking spaces • Two bedrooms or less units (including a den) – one garage space and two open parking • Tandem garage and parking (two spaces max.) are permitted for each individual unit with a maximum of 50% of the all the units allowing tandem parking. • No tandem parking is permitted for open or guest parking spaces. • For developments with 5 or more units where open/guest parking spaces are provided in driveways in front of garages for exclusive use of that unit, one additional on-site guest parking shall be provided. Two additional open guest-parking shall be provided for developments with more than 10 units.
Distance between buildings	No minimum distance required subject to compliance with Building and Fire Code standards.
Driveway width	10-foot minimum, except 16-foot minimum driveway is required if the driveway serves tenants and/or guest parking for more than one dwelling unit.
Driveway length	Straight-in driveways to garages shall have a minimum length of 19-feet from the ultimate property line. No driveways shall be more than 5 feet in length if parking is not provided in front of garage.
Mechanical equipment, excluding antennas and flush-mounted solar panels on roofs	Roof-top location is prohibited unless completely screened from public rights-of-way and adjacent properties.
Front Development Lot:	20 feet
Side and rear (interior)	5 feet for two-stories 10 feet for two-story development abutting RI (single family) residential zones
Side (street side, if applicable) Development Lot:	10 feet Note: Driveways providing straight-in access from a public street to a garage shall be at least 18 feet long, as measured from the property line.
Rear Abutting a Publicly Dedicated Alley	5 feet; however, garages may be required to set back further to ensure adequate back up distance. Rear Yard Coverage does not apply.
Bluff Top Setback	No building or structure closer than 10 feet from bluff crest (see Section 13-34 BLUFF-TOP DEVELOPMENT).
Roof or Eaves Overhang; Awning	2 feet 6 inches into required side setback or building separation area. 5 feet into required front or rear setback.
Open, unenclosed stairways.	Not permitted
Chimneys	2 feet above maximum building height.
Automatic roll-up garage doors	Yes

**TABLE 13-42
SMALL LOT SUBDIVISION STANDARDS**

STANDARDS	SINGLE-FAMILY UNITS (located on individual dwelling unit lots and excluding townhouses)
Location of Open Parking	Guest parking shall be located within a reasonable distance of the unit it serves. Detached garages that are not located within a reasonable distance to the units they are intended to serve are prohibited.
LANDSCAPING	
A detailed landscape plan prepared pursuant to CHAPTER VII LANDSCAPING STANDARDS shall be approved by the Planning Division prior to issuance of any building permits.	
SIGNS (See Chapter VIII).	
Above-ground pool and spas are prohibited in front yards and subject to 5-foot side and rear setback from main structures.	
FENCES AND WALLS	
Fences and walls placed between the property line and required setback line for main buildings shall conform to the City's walls, fences, and landscaping standards. See ARTICLE 9 GENERAL SITE IMPROVEMENT STANDARDS of this chapter for further information.	

(c) Documents required.

- (1) Project approval is subject to submission of complete organizational documents setting forth a plan or manner of permanent care and maintenance of any open spaces, recreational areas and commonly used areas/facilities. No such documents shall be acceptable until approved by the City Attorney as to legal form and effect, and by the Planning Division as to suitability for the proposed use of the open areas.

- (2) Prior to entering into a sales agreement for any property within a small lot subdivision, the developer shall disclose general information regarding the property to the future homebuyers regarding the property including but not limited to the following:
 - a. The type, thickness, and R-value of the insulation that has been installed in the home
 - b. Any exposed hazards during and after construction (Lead-based paint, asbestos, etc.)
 - c. Uses other than residential in proximity to the project
 - d. Unusual adjacent zoning
 - e. Distance to airport if within two miles
 - f. Where soils, filled ground and geologic information is available
 - g. Any special costs that will be incurred by the lot buyer as a result of the installation of a building foundation or any other construction due to unusual soil/geological conditions
 - h. If there is fill in excess of 2 feet
 - i. Schools servicing subdivision and any special conditions.
 - j. Any unusual flooding conditions
 - k. Conditions of approval by the City and any resale restrictions
 - l. Dedications and easements
 - m. Project phasing plan
 - n. CC&Rs

- (3) All small lot subdivisions shall file a declaration of covenants to be submitted with the application for approval. The declaration of covenants shall include, but not be limited to, the following provisions.
- a. The homeowners' association or a maintenance association (as applicable) shall be established prior to the sale of any unit(s).
 - b. Membership in the homeowners or maintenance association shall be mandatory for each owner and any successive owner.
 - c. Provisions to restrict parking upon other than approved and developed parking spaces and to require that garages be kept available for tenant parking shall be written into the covenants, conditions and restrictions for each project.
 - d. If the development is constructed in increments or phases which require one or more final maps, reciprocal covenants, conditions, and restrictions and reciprocal management and maintenance agreements shall be established which will cause a merging of increments as they are completed, and embody one homeowners' association with common areas for the total development.
 - e. The declaration of covenants shall contain language or provisions substantially as follows:
 - i. "The covenants, conditions and restrictions of this declaration shall run to the City of Costa Mesa insofar as they shall apply to the maintenance of the "common areas" as herein defined."
 - ii. "In the event the association or other legally responsible person(s) fail to maintain the common area in such manner as to cause same to constitute a public nuisance, the City may, upon proper notice and hearing, institute summary abatement procedures and impose a lien for the costs of such abatement upon the common area, individual units or the whole thereof as provided by law."

SECTION 2: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this ordinance amending the zoning code will have a significant effect on the environment..

SECTION 3: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2013.

City Clerk
City Council of the City of Costa Mesa

ORDINANCE NO. 176354

An ordinance amending Sections 12.03, 12.09, 12.12.1, 12.21 and 12.22 of the Los Angeles Municipal Code to permit detached for-sale small lot subdivisions in commercial and multifamily residential zones.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 12.03 of the Los Angeles Municipal Code is amended by revising the definition of "lot" to read:

LOT. A parcel of land occupied or to be occupied by a use, building or unit group of buildings and accessory buildings and uses, together with the yards, open spaces, lot width and lot area as are required by this chapter and fronting for a distance of at least 20 feet upon a street as defined here, or upon a private street as defined in Article 8 of this chapter. The width of an access-strip portion of a lot shall not be less than 20 feet at any point. In a residential planned development or an approved small lot subdivision a lot need have only the street frontage or access as is provided on the recorded subdivision tract or parcel map for the development.

Sec. 2. Subdivision 3 of Subsection A of Section 12.09 of the Los Angeles Municipal Code is amended to read:

3. Apartment houses, boarding or rooming houses, dwelling units in a small lot subdivision, or multiple dwellings on lots having a side lot line adjoining a lot in a commercial or industrial zone, provided that:

(a) The use, including the accessory buildings and uses and required yards, does not extend more than 65 feet from the boundary of the less restrictive zone which it adjoins; and

(b) The lot area per dwelling unit or guest room regulations of the RD1.5 zone shall apply to these uses.

Sec. 3. Subsection A of Section 12.12.1 is amended by adding a new subdivision 8 to read.

8. Dwelling unit or units constructed on a lot in a small lot subdivision and approved by the Advisory Agency, pursuant to Article 7 of this Chapter in conformity with the provision of 12.22 C 27 of this Code.

Sec. 4. The first paragraph of Paragraph (a) of Subdivision 4 of Subsection A of Section 12.21 of the Los Angeles Municipal Code is amended to read:

(a) For Dwelling Units. In all zones, there shall be at least two automobile parking spaces on the same lot with each one-family dwelling thereon, and in any RW Zone there shall be at least two automobile parking spaces per dwelling unit which shall be upon the same lot with the dwelling unit. However, for small lot subdivisions approved pursuant to Article 7 of this Chapter in conformity with the provisions of Section 12.22 C 27 of this Code, the required parking spaces shall not be required to be located on the same lot with each dwelling unit, but shall be provided within the boundaries of the parcel or tract map. The ratio of parking spaces required for all other dwelling units shall be at least one parking space for each dwelling unit of less than three habitable rooms, one and one-half parking spaces for each dwelling unit of three habitable rooms, and two parking spaces for each dwelling unit of more than three habitable rooms. Where the lot is located in an RA, RE, RS, R1, RU, RZ, RMP, or RW Zone, the required parking spaces shall be provided within a private garage. Where the lot is located in an R2 Zone, at least one of the required parking spaces per dwelling unit shall be provided within a private garage. Any door or doors installed at the automobile entry to a garage serving a one or two-family dwelling where one or more required parking spaces is located shall be of conventional design constructed so as to permit the simultaneous entry of automobiles into each required parking space without damaging the door or door frame and constructed so as to permit the flow of air through the automobile entry when the door is in the fully closed position.

Sec. 5. Paragraph (h) of Subdivision 5 of Subsection A of Section 12.21 of the Los Angeles Municipal Code is amended by adding a new subparagraph numbered (4) to read:

(4) In a private garage or parking area serving an approved small lot subdivision, where the tandem parking is not more than two cars in depth, and provided that at least one parking stall per dwelling unit and all of the parking stalls required for any guest rooms are individually and easily accessible..

Sec. 6. Subsection C of Section 12.22 of the Los Angeles Municipal Code is amended by adding a new subdivision 27 to read:

27. Small Lot Subdivision in the R2, RD, R3, R4, R5, RAS and the P and C zones pursuant to an approved subdivision tract or parcel map.

Notwithstanding any provisions of this Code relating to minimum lot area to the contrary, in the R2, RD, R3, R4, R5, RAS and the P and C zones, parcels of land may be subdivided into lots which may contain one, two or three dwelling units, provided that the density of the subdivision complies with the minimum lot area per dwelling unit requirement established for each zone, or in the case of a P zone, the density of the subdivision shall comply with the minimum lot area per dwelling unit of the least restrictive abutting commercial or multi-family residential zone(s).

(a) A parcel map or tract map, pursuant to Section 17.00 *et seq.* of this Code shall be required for the creation of a small lot subdivision.

(b) The minimum lot width shall be 16 feet and the minimum lot area shall be 600 square feet. The Advisory Agency shall designate the location of front yards in the subdivision tract or parcel map approval.

(c) Vehicular access may be provided to either a lot containing a dwelling unit or to its required parking spaces by way of street or alley frontage, driveway access or similar access to a street.

(d) All structures on a lot which includes one or more dwelling units, may, taken together, occupy no more than 80% of the lot area, unless the tract or parcel map provides common open space equivalent to 20% of the lot area of each lot not meeting this provision.

(e) No front, side, or rear yard shall be required between lots within an approved small lot subdivision. However, a five-foot setback shall be provided where a lot abuts a lot that is not created pursuant to this subdivision.

(f) No passageway pursuant to Section 12.21 C 2 of this Code shall be required.

(g) In a P zone, lots may be developed as a small lot subdivision, provided that the General Plan land use designation of the lot is "commercial" or "multiple family residential."

(h) In an R2 zone, a lot may be developed as a small lot subdivision provided that the lot meets the requirements of Section 12.09 A 3 of the Code.

(i) A dwelling unit in a small lot subdivision shall not be required to comply with Paragraphs (a), (b), (f) and (g) of Section 12.21 A 17 of this Code.

(j) Fences and walls within five feet of the front lot line shall be no more than three and one-half feet in height. Fences and walls within five feet of the side and rear lot lines shall be no more than six feet in height.

(105208)

Sec. 7. 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 in the Main Street lobby to the City Hall; one copy on the bulletin board located at the ground level at the Los Angeles Street entrance to the Los Angeles Police Department; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of DEC 14 2004

FRANK T. MARTINEZ, City Clerk

By *Marie Hernandez*
Deputy

DEC 16 2004

Approved _____

James Hahn
Mayor

Approved as to Form and Legality
Rockard J. Delgadillo, City Attorney

Pursuant to Charter Section 559, I approve this ordinance on behalf of the City Planning Commission and recommend it be adopted

By *Sharon Siedorf Cardenas*
SHARON SIEDORF CARDENAS
Assistant City Attorney

December 3, 2004

see attached report.

Con Howe
CON HOWE
Director of Planning

Date DEC 03 2004

File No. CF 04-1546; CPC 2004-3334-CA

DECLARATION OF POSTING ORDINANCE

I, JULIA AMANTI, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No. 176354 - Amending Sections 12.03, 12.09, 12.12.1, 12.21 and 12.22 of the L.A.M.C. re: To Permit Detached For-Sale Lot Subdivisions in Commercial & Multifamily Residential Zones - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on Dec. 14, 2004, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on Dec. 22, 2004, I posted a true copy of said ordinance at each of three public places located in the City of Los Angeles, California, as follows: 1) One copy on the bulletin board at the Main Street entrance to Los Angeles City Hall; 2) one copy on the bulletin board at the ground level Los Angeles Street entrance to the Los Angeles Police Department; and 3) one copy on the bulletin board at the Temple Street entrance to the Hall of Records of the County of Los Angeles.

Copies of said ordinance were posted conspicuously beginning on Dec. 22, 2004 and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 22nd day of Dec. 2004 at Los Angeles, California.



Julia Amanti, Deputy City Clerk

Ordinance Effective Date: Jan. 31, 2005

Council File No. 04-1546



DIVISION OF LAND

City Hall • 200 N. Spring Street, Room 750 • Los Angeles, CA 90012



Date: January 10, 2006

To: Licensed Engineers, Surveyors and Subdivision Consultants

From: Emily Gabel Luddy 
Deputy Advisory Agency

Subject: ADVISORY AGENCY POLICY NO. 2006-1
SMALL LOT SUBDIVISION (TOWNHOME) ORDINANCE

Introduction

On January 31, 2005 Ordinance No. 176,354 became effective. It is also known as the "Small Lot Subdivision (Townhome) Ordinance". The new ordinance is posted on the web at <http://cityplanning.lacity.org>, under Housing Initiatives.

The ordinance permits the subdivision of multi-family and commercially zoned properties into small single family or townhome style lots by reducing the minimum lot size and side yard requirements, and eliminating requirements for conventional street frontage. The ordinance does NOT apply to single family zones.

The Small Lot Ordinance applies only to projects involving divisions of land applications for: Tracts (5 dwelling units or lots or more) or Parcel maps (4 or less dwelling units or lots). The dwelling units can be townhome, patio, bungalow courtyard style or other configurations, as long as each structure, from the foundation to the roof, is separate and independent on its own.

The Department of Building and Safety will only accept construction drawings for Plan Check, after the effective date of the Advisory Agency approval under the Small Lot Ordinance of a subdivision for the division of land (Tract or Parcel Map applications)

The purpose of the Small Lot ordinance is to enable ownership of fee simple single family homes. Because this new type of subdivision requires the analysis and recommendations of several City agencies, the following items must be addressed through the clear depiction of the proposed subdivision.

Filing Documents for Your Small Lot Subdivision

In addition to the routine documents filed with new subdivision/parcel applications, a Small Lot subdivision/parcel map filing must contain additional specific items:

1. A Tract Map is required to create 5 or more lots. The Tract must be filed as a "Vesting Tentative Tract Map for Small Lot Subdivision Purposes," and accompanied by illustrative site plan, buildings elevation(s) and other illustrative information.

A Site Plan Layout shall be superimposed over the proposed lot lines.

2. A Parcel Map is required to create 4 or less lots. The Parcel Map must be filed as a "Preliminary Parcel Map for Small Lot Subdivision Purposes," and accompanied by similar illustrative plans.

A Site Plan layout shall be superimposed over the proposed lot lines.

3. Each tentative or preliminary map shall include in the Notes Section of the map: "Note: Small Lot Single Family Subdivision in the ___ Zone, pursuant to Ordinance No. 176,354. "

4. A Site Plan superimposed on the proposed Small Lot tentative or preliminary map shall denote the following items:

- a. Any easement(s) outside of the building envelopes for vehicular and pedestrian ingress/egress; emergency access, utilities and infrastructure purposes. These easements must be identified as either public easements (for public utility purposes, for example); or private reciprocal easements (crossing lot lines for vehicular and pedestrian access and/or cross lot surface drainage, common landscape areas, for example).
- b. Building footprint(s).
- c. Identification of front, side and rear lot lines for each internal lot.
- d. Identification of setbacks – from adjoining properties; from front, rear and side yards within the proposed Small Lot subdivision. A matrix may also be used to identify setbacks, but should be placed on the Site Plan for ease of analysis (a sample matrix will be available online on the small lot website). A setback of 3 feet is allowed within the Venice Coastal Specific Plan Ord. No. 172,897 from adjoining properties on the side yard.
- e. Identification of Driveway Easement(s), location and width. Label "community driveway/fire lane" for clarity.
- f. Identification of vehicular back up space consistent with the requirements of the Zoning Code and the Department of Building and Safety.
- g. Identification of trash collection areas.

- h. All public and private easements will be shown on the Final Map.
- i. The Final Map must be labeled: “Final Vesting Tract Map for Small Lot Subdivision Purposes” OR “Final Parcel Map for Small Lot Subdivision Purposes”
- j. Accessory structures shall be shown on the tentative and Final Map and shall not be located in the required setback area.

Other Requirements for a Small Lot Subdivision

1. A Maintenance Association will be required, composed of all property owners, to maintain all common areas such as trees, landscaping, trash, parking, community driveway, walkways, monthly service for private fire hydrant (if required), etc. Each owner and future property owners shall automatically become members of the association and shall be subject to a proportionate share of the maintenance.
2. Recorded Covenant and Agreement(s) will be required for all reciprocal private easements.
3. The minimum driveway/fire lane width will be 20 feet; any back up space (vehicles leaving garages) must comply with the Zoning Code and the Department of Building and Safety requirements.
4. Light courts or wells shall be a minimum of 3 feet in width for up to two-story buildings and 4 feet in width for three-story buildings when it is next to exterior openings providing natural light and ventilation. LAMC 91.1203.4.1.
5. Emergency access and egress windows at bedrooms shall be so located that they are accessible by the Fire Department. LAMC 91-1203.

The following Departments have standard requirements. In the event, a subdivider has an alternative proposal to these, then s/he must meet and get approval from relevant department prior to the Advisory Agency hearing.

6. Los Angeles Fire Department Requirements:
 - a. The entrance or exit of all ground dwelling units shall not be more than 150 feet from the edge of a roadway of an improved street, access road, or designated fire lane. If it exceeds 150 feet, a turnaround is required.
 - b. The Fire Department will require additional vehicular access (community driveway/fire lane width of 28 feet) where buildings exceed 28 feet in height at the edge of the roof. If they exceed 28 feet, a minimum 5-foot stepback is required – or other alternative to the satisfaction of the Fire Department. The

subdivider must secure tentative approval from the Fire Department prior to the Advisory Agency hearing.

- c. No building or portion of a building shall be constructed more than 300 feet from an approved fire hydrant. Distance shall be computed along path of travel. Exception: Dwelling unit travel distance shall be computed to front door of unit.
 - d. That all Small Lot Subdivisions are required to be fully fire sprinklered.
7. Bureau of Sanitation (BOS) Solid Resource Collection Division - If the subdivider elects to utilize a City of LA waste collection service, the following are required:
- a. In order for BOS to provide "community driveway" collection, a LAFD turnaround area is required. Otherwise, the residents will be required to place their containers on the City street for collection.
 - b. BOS requires the driveway serving the small lot to be no less than 15 feet in width. If parking is allowed, the vehicle travel area, with cars parked cannot be less than 15 feet wide at any point.
 - c. If the property is gated, the gate opening must be a minimum of 20 feet wide and the gates must remain open on trash collection day from 6 am to 6 pm.
 - d. Prior to making collection on a "community driveway" the BOS must have a signed waiver releasing them from any damage to the road that may occur due to the weight or hydraulic system in their trucks.
 - e. There must be 20 feet of clearance directly above the curb. It must be clear of any trees or other obstacles.
 - f. All collection Rules and Regulations would apply.

A Word About Specific Plan Regulations and Small Lot Proposals

Adopted specific plans may contain detailed regulations for multi-family zones, including restrictions on parking, guest parking, building heights and open space. READ THE PLAN CAREFULLY. It is likely that a small lot subdivision will be evaluated against the multi-family regulations of any adopted specific plan. In the event a deviation is sought from a specific plan, the Advisory Agency recommends that any such deviation fall within the boundaries of a Project Permit Adjustment (PPA) described in Section 11.5.7-E,2 of the Municipal Code, as these are minor deviations; and a PPA will be processed concurrently with the subdivision. If a Specific Plan Exception is required, that application must be processed separately through a Commission Hearing Examiner.

Other Handy References: Small Lot Guidelines

The Planning Department website also posts Small Lot Subdivision Guidelines to provide visual examples and some of the “do’s and don’ts” of this innovative ordinance. Please consult the guide for good ideas.

Departments Participating in Preparation of the Policy

This policy has been issued with concurrence of the most affected departments: Building and Safety, Bureau of Engineering, Bureau of Sanitation, Transportation and Fire. Subdividers are always encouraged to discuss individual site circumstances with all departments prior to the Advisory Agency public hearing.

This Policy will be reviewed on July 1, 2006.

EGL:dl

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CITY OF LOS ANGELES
SMALL LOT DESIGN
GUIDELINES



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1 | INTRODUCTION

THE CITY OF LOS ANGELES has enacted the Small Lot Ordinance (No. 17354) to allow the construction of fee-simple, infill housing on small lots in multi-family zones. The housing can take the form of single-family homes, duplexes, or triplexes. Small lot developments can offer a space-efficient and economically attractive alternative to the traditional condominium development.

Additionally, the ordinance offers a welcomed smart-growth alternative to the suburban single-family home. However, it brings a new set of spatial complexities. Lots may be both small and awkwardly shaped. Driveways and parking can take up much of an already limited lot size. Adjacent structures and neighborhood context may effectively limit building heights above two stories. In short, these spatial constraints and complexities require innovative design solutions.

This handbook provides design guidelines and suggestions both for addressing these complexities, and for ensuring that each small lot development benefits both its residents and the neighborhood.

LOOKING AT SMALL LOT DESIGN FROM THREE LEVELS

Constructing infill housing offers a unique set of design challenges not simply on the parcel level, but also on the neighborhood level and within the public realm. Developers and architects must therefore consider both the design elements of each townhouse and how these designs will enhance the overall neighborhood character and vitality of the street and sidewalk.

PARCEL

Small lot design and layout is fundamentally a site planning challenge. It requires simultaneously addressing practical spatial requirements while creating high-quality living environments. Those practical requirements include: parking and automobile access; small lot sizes and awkward configurations; adequate access to air, light, and ventilation; outdoor space and privacy. Developers must address these issues in ways that ultimately enhance the living environment of each dwelling unit. Additionally, each home must exhibit a high level of design quality: well-articulated entries and facades, proportionate windows, quality building materials, contextual landscaping.



NEIGHBORHOOD

By its very nature, infill development occurs in neighborhoods with preexisting development and preexisting characteristics. In some cases, the neighborhood will be predominantly residential; in others, the neighborhood might be predominantly commercial. Whatever the case, the design should enhance the overall quality of the neighborhood. At this scale, developers and architects must consider not simply the aesthetic nature of each townhouse, but the three-dimensional nature of the entire development: height, massing, siting and orientation. These characteristics must relate to the surrounding built form, respecting the overall neighborhood character and existing topography.

**PUBLIC REALM**

Each infill project, however small, must add to a vital and coherent public realm—streets and sidewalks that are pleasant, interesting, and comfortable to walk down. To do so, one must consider the three-dimensional relationship between the infill project and the street and sidewalk. Key variables to consider are: building siting and orientation, height and massing; articulation of facades and entryways; placement and type of street trees; landscaping and transitional spaces; and location of driveways and garages.

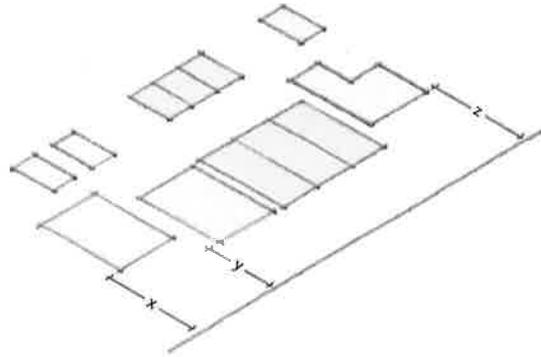
COMPREHENSIVE GOALS:

- Create high-quality indoor and outdoor living environments for all residents
- Design and configure housing to mesh well within the existing neighborhood context
- Enhance the public realm
- Provide fee-simple home ownership opportunities for greater numbers of people, of a range of income levels
- Consolidate service and access areas (parking, driveways, garbage) to minimize their adverse effects on both the public and private realms
- Create high-quality public spaces or common areas (i.e. shared driveways, landscaped areas)

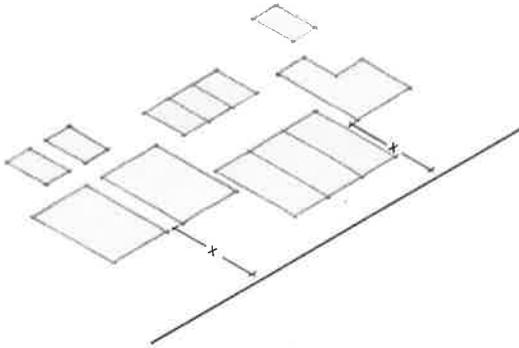
2 | SITE ORGANIZATION AND URBAN FORM

2.1 SETBACKS AND SIDEYARDS

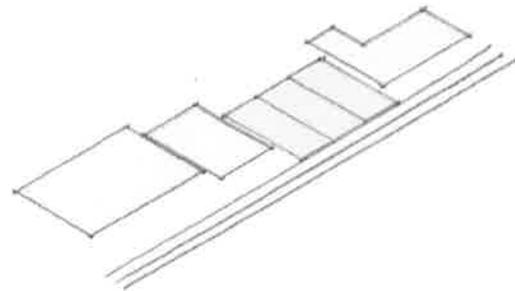
No setbacks are required; however, neighborhood context should provide direction for setting buildings further back from the street. On commercial streets, which have a more urban character, minimal setbacks are appropriate - simply enough room for a small front stoop, and some landscaping to delineate the public and private realms (however, dwellings with ground-floor retail require no setbacks). On residential streets, preexisting setbacks will guide how far a small lot development is set back.



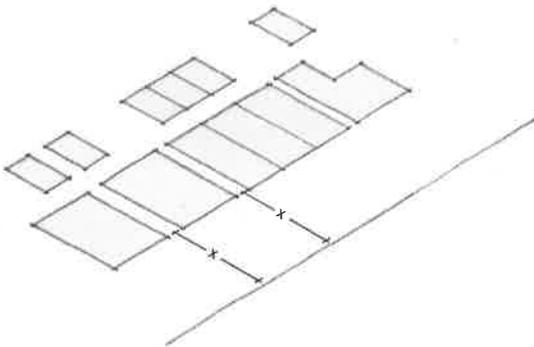
On residential streets with a range of setbacks, align small lot dwellings with the furthest protruding building.



In residential neighborhoods, AVOID configurations that ignore existing setbacks.



On commercial streets with a range of setbacks, small lot developments should nearly abut the sidewalk, allowing some room for an entry, front stoop, and some transitional landscaping. However, dwellings with ground-floor retail do not require such elements.



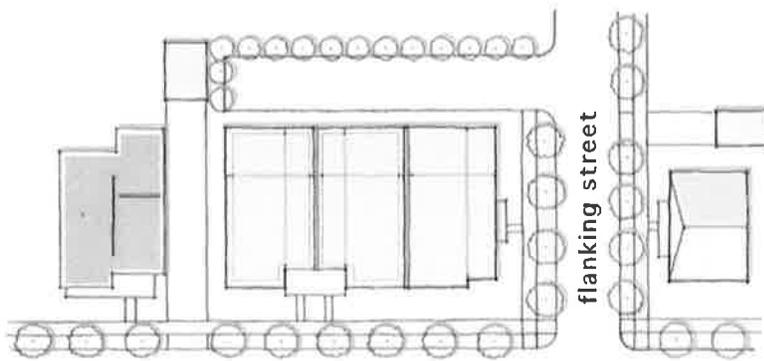
Where a uniform neighborhood setback exists, align the small lot development with this setback. Slight deviations from the setback are acceptable.

SETBACK GUIDELINES

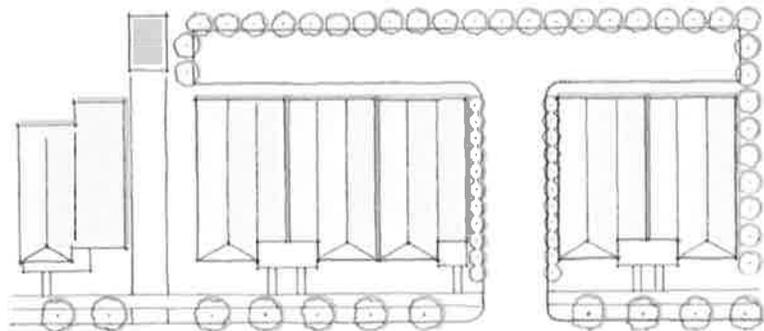
- For both commercial and residential streets, provide space for an entry, front landing, and transitional landscaping between the public sidewalk and the private entryway.
- Match existing setbacks to the extent possible.
- On streets with varying setbacks, align small lot dwellings with the furthest protruding dwelling.

2.2 SITE LAYOUT AND DESIGN

Numerous spatial constraints – parking and driveways, adequate indoor and outdoor living space, and small lot size – require spatially innovative solutions. Builders and designers should ask such questions as: Can I provide outdoor space not only at ground level, but also on balconies and rooftops? Is there an alternate configuration that might take advantage of existing topography to provide more open space? How might adjacent structures and street characteristics affect the development's overall form and orientation? Builders and designers should explore as many spatial avenues as possible, ultimately striking a balance between practical spatial requirements (i.e. parking, adequate interior space) and the provision of amenities (i.e. private outdoor space).

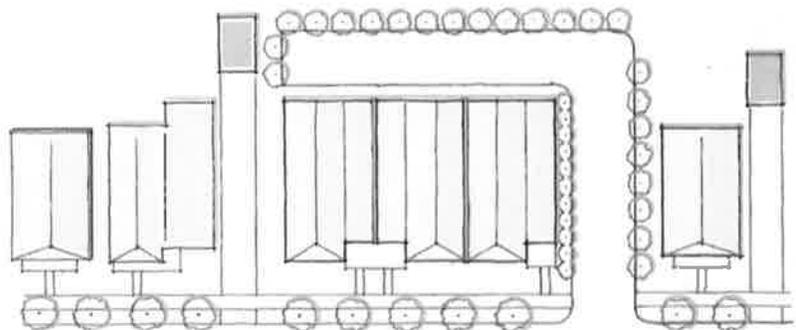


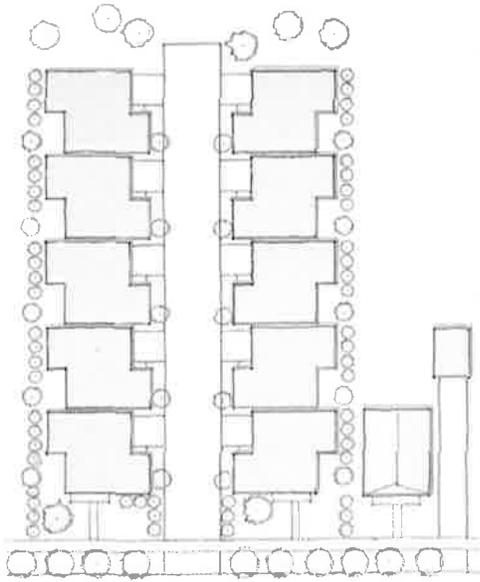
Rear driveway off flanking street



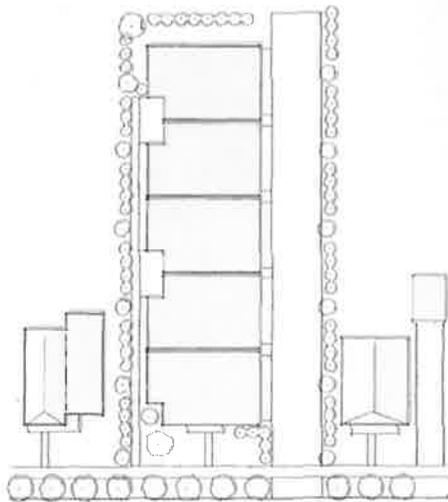
T-driveway off front street

L-driveway off front street



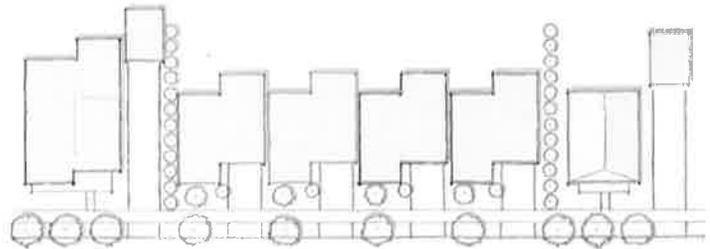


Townhouses with a center access driveway can enhance the public realm when front townhouses are accessible from the sidewalk.

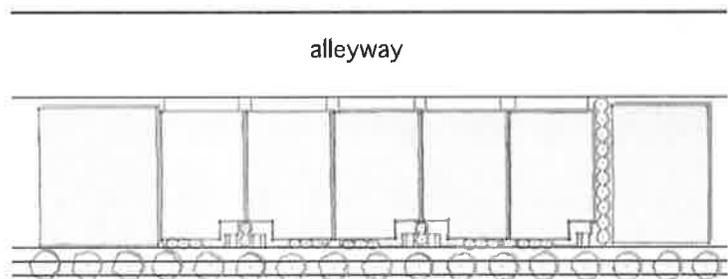


Small lot developments with a side access driveway should configure front townhouses to be accessible from the sidewalk. Interior townhouses should be accessed from both the driveway and a private walkway at the front of the homes.

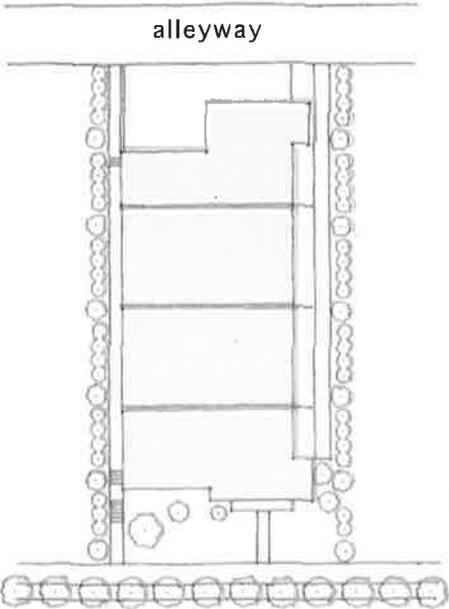
Configurations should also engage the street, sidewalk and public realm. Streets serve not only as space for vehicular movement, but also as public space for pedestrian activity and casual social interaction. When designed well, small lot developments can enhance the pre-existing character of a good street, or improve a fragmented one. To do so, infill housing should embrace rather than ignore the street.



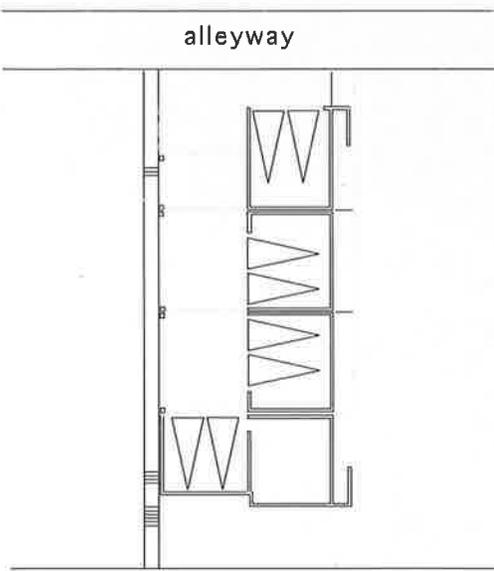
Rowhouses with integral front garages can adequately engage the street if garages are not allowed to dominate the facade. Tandem parking can minimize how much facade space is allocated to parking. One might also consider stacked parking with the aid of lifts.



Rowhouses on commercial streets with rear alleyway access can eliminate integral front driveways and minimize setbacks to enhance the urban nature of the street.

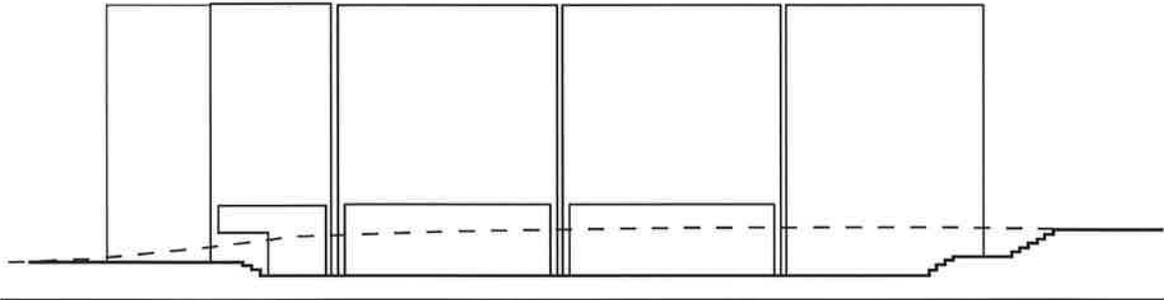


Plan view



Parking-level floor plan

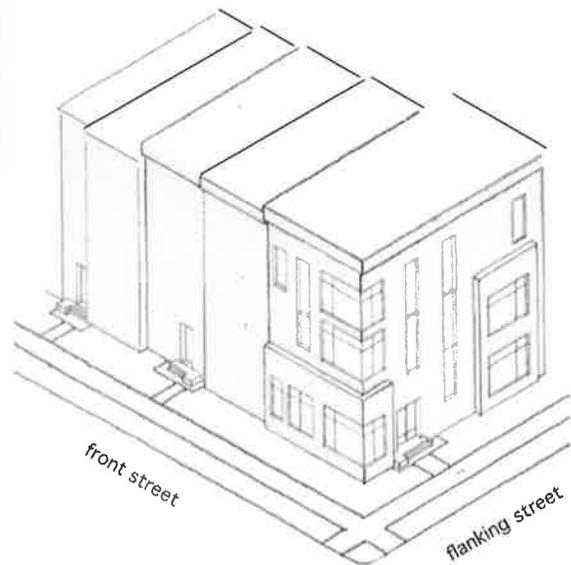
It is possible to locate parking beneath dwellings. In this particular layout, residents access parking from the alleyway and use a community driveway to reach their own parking stall. Notice in the above righthand illustration how the dwellings are still structurally independent.



As shown in this side elevation, the parking is not technically subterranean. The site is excavated so that the buildings sit below the average natural grade (indicated with a dashed line) and can be accessed from the side staircase and walkway as well as from the community driveway.

SITE LAYOUT GUIDELINES:

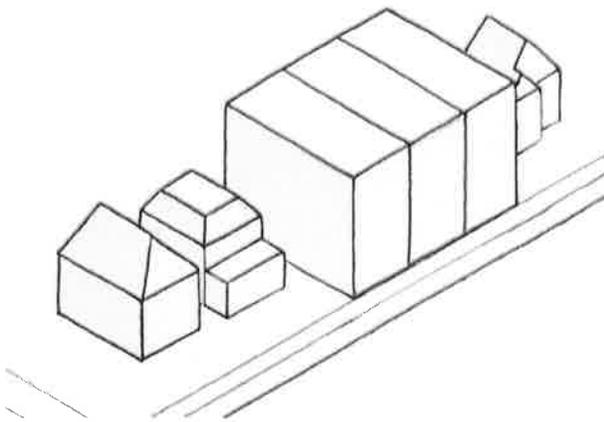
- To the extent possible, configure townhouses to front streets and open spaces, not driveways.
- For townhouses not immediately adjacent to the street, provide a private walkway from the sidewalk to them.
- Minimize the total amount of driveway space and maximize green space.
- Where possible, utilize alleyways for access.
- Take advantage of existing topography and natural features (i.e. existing trees).
- Small lot developments that occupy a corner lot must have the corner townhouse entrance front the flanking street.



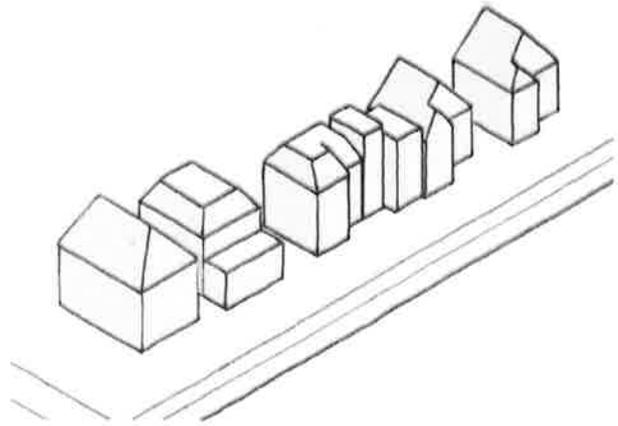
Small lot developments that occupy a corner must have the corner townhouse entrance and main facade front the flanking street.

2.3 HEIGHT AND MASSING

Massing refers to how a building's volume is broken up and articulated. A building envelope is the maximum built volume allowed under the code. Well-designed buildings tend not to max out the building envelope but rather employ volumetric variations (i.e. height, massing, rhythm, texture) to create visual interest. These variations serve dual functions: they help small lot developments mesh with their surroundings, and they enhance the overall quality of the street and public realm by providing visual interest for pedestrians.



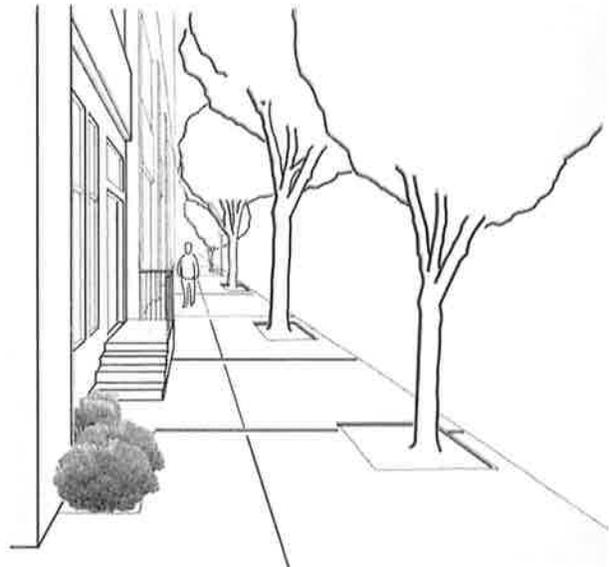
Small-lot developments that max out the building envelope rarely blend well into existing single-family neighborhoods.



Variations in height and massing, borrowing various forms from adjacent structures, can help small-lot developments blend better into the neighborhood.

HEIGHT AND MASSING GUIDELINES

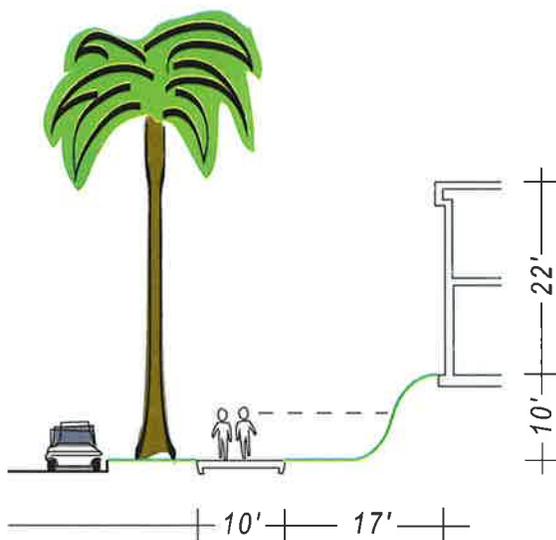
- Use surrounding built context to inform variations in height and massing.
- Avoid excessive differences in height between the new development and adjacent buildings.
- On streets with a more urban character, ensure adequate massing and facade variation at street level.



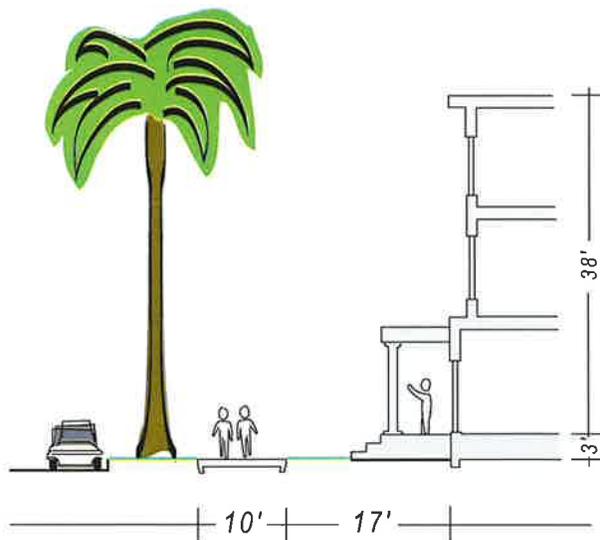
On streets with a more urban character, small-lot developments should still employ variations in massing (particularly at street level) to enhance the pedestrian realm.

2.4 GRADE LEVEL

A common concern of infill townhouses is their excessive height in relation to surrounding structures. Appropriate grade levels consistent with those of surrounding structures can help to offset the potentially negative effects of increased building height. Designers and builders should avoid designs with excessive artificial grading. Resulting buildings ultimately appear taller than what they may be, and their facades tend to tower above the sidewalk, creating an unsightly and inhospitable environment for pedestrians and neighbors. On the other hand, subtle changes in grade can create a key transitional zone between the public and private realms, as well as additional privacy for townhouse inhabitants.



Small lot developments with excessive grading tend to tower above the neighborhood as well as the sidewalk. The healthy interaction between the public and private realms is compromised.



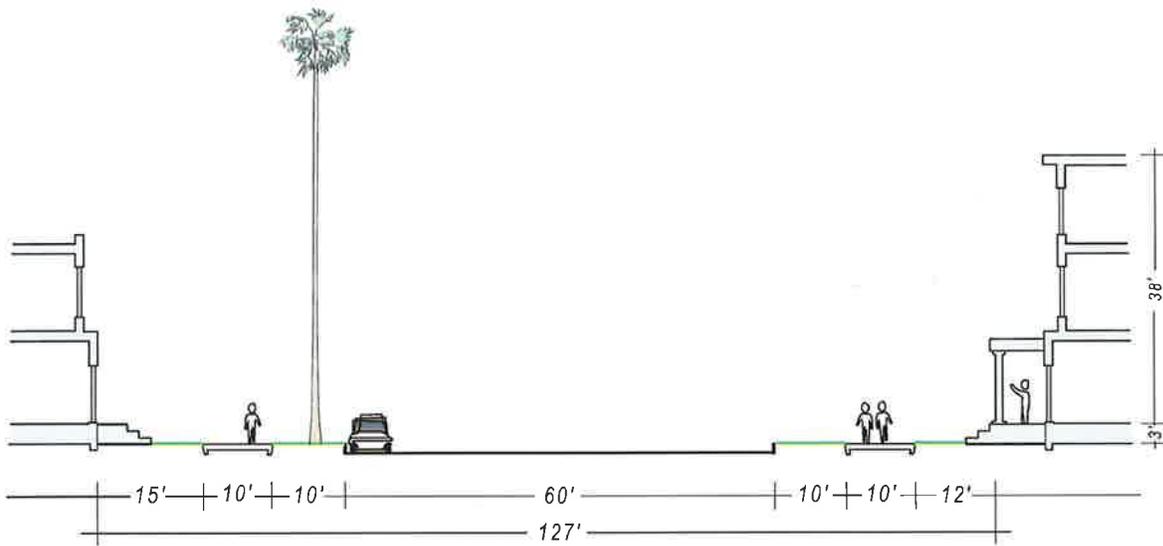
Subtle grade changes (here, three feet) clearly delineate the public and private realms while still maintaining a comfortable relationship between these realms and their users.

GRADE LEVEL GUIDELINES

- Entrances should be three to five steps above grade or consistent with the average grade of existing structures.
- Use “theoretical grade” as opposed to “average natural grade” when siting the development. “Theoretical grade” is defined by “an imaginary line from the midpoint of the parcel on the front property line to the midpoint of the parcel on the rear property line.”
- Townhouses whose entrances front commercial boulevards should sit three to five steps above sidewalk level to allow room for a stoop and entryway and ideally some landscaped area. However, live-work or ground-floor commercial arrangements whose work spaces front the boulevard do not require a grade separation.

2.5 BUILDING-TO-STREET PROPORTION

Building-to-street proportion refers to the relationship between the height of buildings on each side of the street, to the width between those buildings. Ideal proportions create a public realm that is pleasant for both the street's residents and passers-by. In essence, this means thinking of the street and sidewalk as a potential "outdoor room." These are the kinds of outdoor spaces humans tend to most enjoy being in and walking through. Through setbacks, appropriate heights, and landscaping, small lot developments can help contribute to the creation of these outdoor rooms.



With a height of 41 feet, the small lot development creates a height-width ratio of approximately 1:3. While this ratio is sufficient for creating the semblance of an outdoor room, the street could benefit from landscape interventions within the public and private realms adjacent to the small lot development.



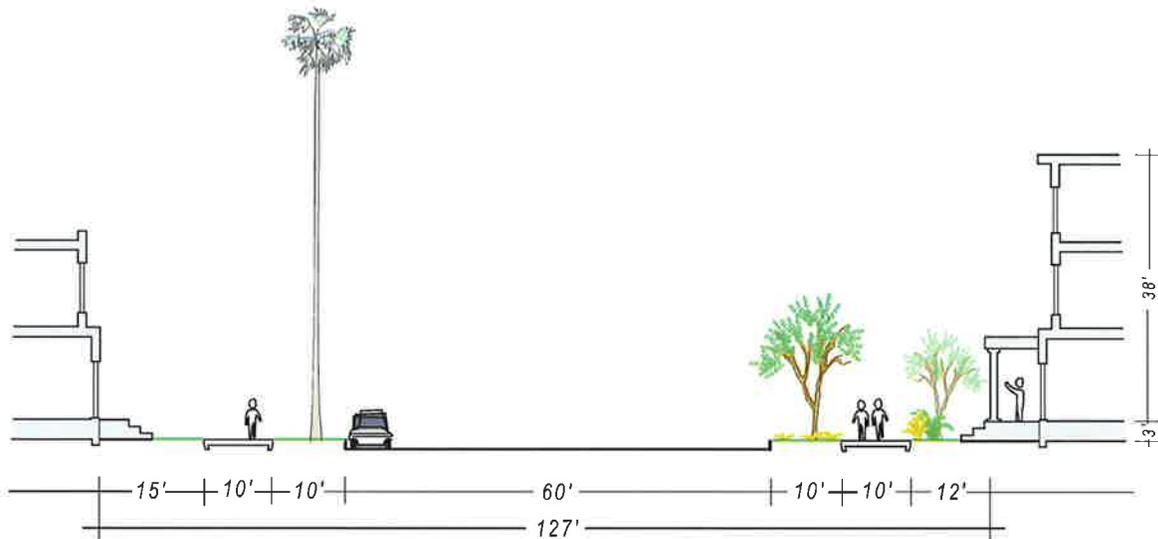
Many Los Angeles streets have skewed height-width ratios: low-rise buildings but narrow sidewalks and extremely wide streets. Shown at left: Hollywood Boulevard near the 101 Freeway, looking west.

While there is no magic number, the “walls,” or building heights, should extend upwards at least one-quarter the width of the “floor,” or the width between buildings on opposite sides of the street. Widths exceeding four times the height of buildings tend to eliminate any sense of enclosure for the pedestrian.

In some cases, neighborhood context may preclude increased building heights. In this case, one can add street trees within the public right-of-way, and trees and landscaping within the front yard area, to add further definition to the public realm. The effect is to create clearly defined, shady spaces



The simple addition of shade trees along the parkway (here, above right, Sycamores) can greatly enhance the sense of enclosure and comfort for pedestrians and residents.



Landscaping within the public, transitional, and private realms heightens the semblance of an outdoor room. Use canopy-creating shade trees in the public and private realms. Groundcovers and low-growing plants (not higher than 4') can further enhance the understory of the public and transitional realms without creating wall-like barriers.

BUILDING-TO-STREET PROPORTION GUIDELINES

- Attempt to achieve a building + grade height of at least 1/4 the width of the space between buildings on opposite sides of the street.
- Define the public right of way through the planting of shade trees (see landscaping section for suggested species) and low-growing vegetation.
- Plant shade trees and ornamental plants within the private realm, to add increased definition and visual interest to both the public and private realms. However, avoid landscape schemes that call for 4'+ shrubs or other plants immediately adjacent to the sidewalk.



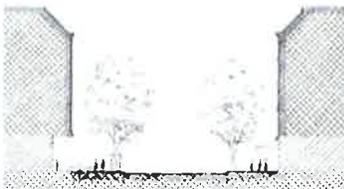
Normandie Boulevard, Koreatown
 Street width: 50'
 Width, building face to building face: 78'
 Building heights: 65-80'
 Height-width ratio: 1:1



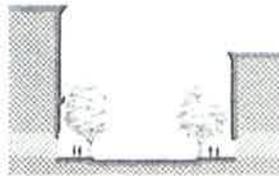
Dunsmuir Avenue, Miracle Mile
 Street width: 40'
 Width, building face to building face: 86'
 Building heights: 24'
 Ratio: 1:3



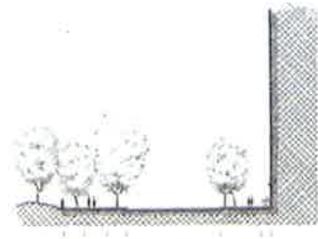
Larchmont Boulevard, Larchmont Village
 Street width: 70'
 Width, building face to building face: 101'
 Building heights: 13-26'
 Ratio: 1:4



Boulevard Saint-Michel, Paris
 Street width: 50'
 Width, building face to building face: 98'
 Building heights: 80'
 Height-width ratio: 1:1.2



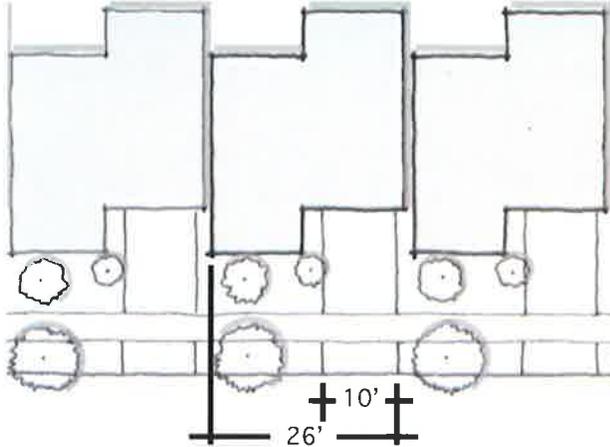
Via Cola di Rienzo, Rome
 Street width: 50'
 Width, building face to building face: 82'
 Building heights: 50-70'
 Ratio: 1:1.4



Fifth Avenue, New York
 Street width: 45'
 Width, building face to park edge: 100'
 Building heights: 60-300+'
 Ratio: 1:2 to 3:1+

Street drawings and dimensions taken from Jacobs, Allan B. *Great Streets*. Cambridge: MIT Press, 1993.

3 | PARKING AND DRIVEWAYS



If an integral front driveway configuration is the only option for a small lot development, ensure that the building width allows for landscaping and a front entryway.



Avoid designs in which the garage dominates the dwelling's facade.

PARKING AND DRIVEWAYS

The design of small-lot developments must strike a particular spatial balance: simultaneously accommodate for the automobile but maintain high-quality public and private living environments. Often, small-lot configurations allow parking, driveways, and garages to dominate the landscape. These kinds of configurations both create conflicts for pedestrians and decrease the overall aesthetic quality of the development. Frequent curb cuts and driveways jeopardize pedestrian safety and eliminate space for street trees and on-street parking. Parking improperly placed at the front of townhouses can transform their facades into large, unsightly garages. Ideally, designs should locate parking behind dwellings, accessed from alleys where present. If driveways are necessary, designs should minimize their number.

3.1 NUMBER OF SPACES

The small lot ordinance requires the provision of two parking spaces per unit. Tandem parking is perfectly acceptable, space permitting. One space can be for a compact car.

For small lot developments under 10 units, guest parking is not required. For developments between 10 and 100 units, .25 spaces should be provided per unit. For developments larger than this, .5 spaces should be provided per unit.

3.2 DIMENSIONS

The small lot ordinance stipulates the following dimensions for parking spaces:
8'8" x 18' for standard-size cars;
7'6" x 15' for compact cars.

Driveway width depends on lot depth and building configuration. Integral front driveways should be 10'. In these configurations, the building width should adequately allow for integral front parking plus some yard and porch or landing space. Access driveways will vary in width depending on lot size, depth, and building height. Please consult the Fire Department.

3.3 DESIRABLE CONFIGURATIONS

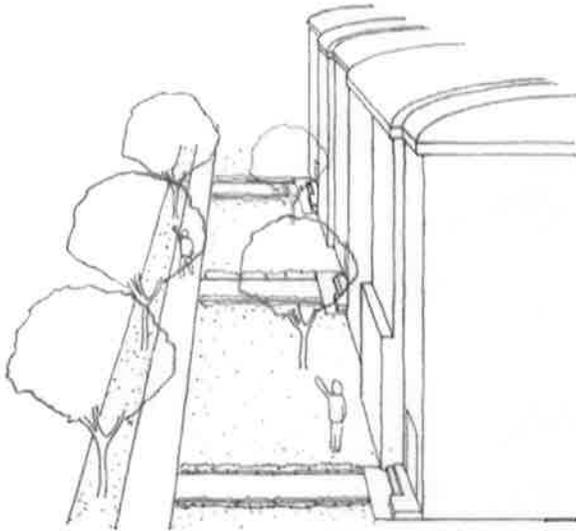
See section 2.2 for configurations.

3.4 DRIVEWAY MATERIALS

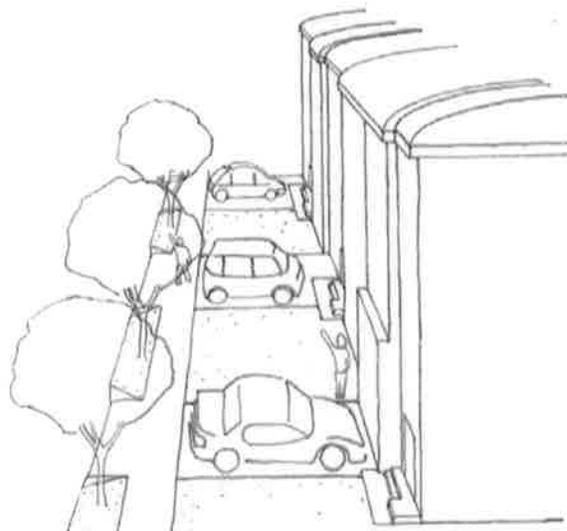
Currently semi-pervious driveway materials are not allowed under the code. However, one can use stamped concrete to create a more aesthetically pleasing alternative to the black asphalt driveway.

PARKING GUIDELINES

- Favor townhouse configurations that locate parking to the rear of dwellings
- Where available, use alleyways as access to off-street parking
- If integral front driveways must be used, the building width should allow for the driveway plus an ample amount of landscaping space and a front entryway, porch, or landing.



When driveways are located to the rear of dwellings, the streetscape can become a comfortable outdoor space for residents and passers-by.



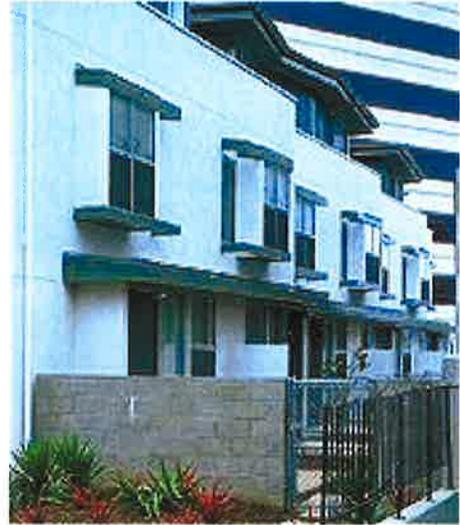
Integral front driveway configurations tend to disrupt the continuity of the sidewalk and public realm, and eliminate space for street trees and on-street parking.

4.1 FENESTRATION

Effectively placed and articulated windows serve several practical and aesthetic functions: access to light and air; a transparent bridge between the public and private realms; rhythm and visual interest. Because Los Angeles architecture runs the gamut of styles, it is difficult to suggest one particular window style for townhouse developments. However, some general rules of thumb exist for ensuring that window placement and design enhance the overall quality of the project.

FENESTRATION GUIDELINES

- Placement should follow some consistent rhythm, to create visual clarity as well as to help avoid the creation of blank walls.
- Windows need not all be horizontally or vertically proportioned but rather their placement and orientation should take cues from the building's overall style and configuration.



Regardless of architectural style, window placement should follow some consistent rhythm. Note that rhythm is not necessarily synonymous with symmetry.





4.2 ARTICULATION OF ENTRYWAYS

Entryways serve as the gateway between the public and private realms. When designed well, and clearly defined, they simultaneously welcome visitors and clearly delineate the boundaries of the private realm. They may also offer habitable outdoor space in the form of a small front porch or patio.

ENTRYWAY GUIDELINES

- Entryways should be clearly identifiable. This can be achieved through stepping up the entryway, adding awnings, creating a landing area or front porch, and the addition of design details.
- Those townhouses fronting a street should always have their primary entryway accessible from the street.
- In the case of corner townhouses, the entryway should open onto the flanking street.
- Entryways should sit at a grade comparable to those of the surrounding structures but should never tower above the street.
- Garages should not take the place of the main entryway.



4.3 BUILDING MATERIALS

Because Los Angeles architecture varies in style – oftentimes within neighborhoods – these guidelines do not prescribe particular building materials. However, neighborhood context and the surrounding structures should inform one’s choice of materials. Generally, one should choose durable, high-quality materials, considering how the materials will effect the overall look and feel of the small lot development

4.4 ROOF LINES

Roof lines should offer some variation in form, both vertically and horizontally. However, less is often more. While townhouses should exhibit some individuality, excessively varied and multi-pitched and gabled roofs tend to create a visual chaos that is undesirable and unnecessary. The key is to consider the effect the building’s design elements (i.e. height and massing, entryways, balconies, roof lines) will have on the overall look and form of the dwelling.



Excessively varied and multi-pitched and gabled roofs risk creating a visual chaos.



Roof lines can create subtle variations in form while still allowing room for individuality.

LANDSCAPING AND SMALL LOTS

Two types of landscape areas exist when designing small lots: those adjacent to the public right of way, and those located within the site. Each fulfills a dual but somewhat separate role. Those adjacent to the public right of way are not simply assets to their owners, but also to the neighborhood, the public realm, and to passers-by. These landscapes help to create a sort of outdoor living room. Those landscapes located within the site are assets not simply to the residents of the small-lot development, but also to the individual owners of that landscape. They provide much-needed private outdoor space and some territory to treat as their own.

5.1 LANDSCAPING ADJACENT TO THE PUBLIC RIGHT OF WAY

Front yard space serves a dual function, and thus deserves particular attention. It acts as both habitable outdoor space for its owners, and as a proverbial shared living room of the neighborhood. That is, while strangers may not walk into the space, the yard is still a visual amenity to the neighborhood and passers-by. Additionally, it serves as a semi-transparent bridge between the private interior of the townhouse, and the public realm of the sidewalk and street.

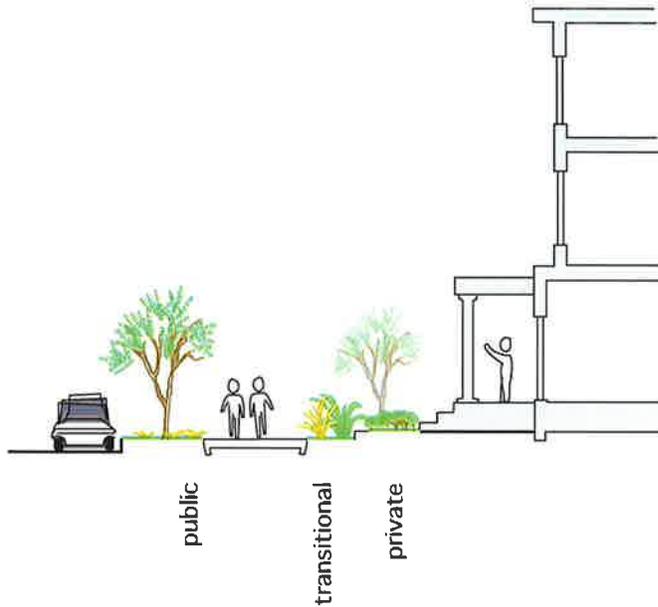
Typical but inappropriate landscaping comes in the form of turf grass along the parkway and no street trees; 7'-tall shrubs or fencing in the transitional zone, or just turf grass; and turf grass in the private realm, with a few shrubs abutting the building. The effect is a bland environment that offers little visual interest, but that requires much water to maintain. This kind of landscaping views the space as an afterthought.



Transitional planting of Senecio (ground cover), Silver Jade (foreground), Fox Tail Agave (center), Toothless Sotol (upper), and olive trees.



This landscape of turf grass and few trees is visually bland, requires extensive irrigation, and fails to enhance or define both the public and private outdoor realms.



Subtle variations in grade and drought-tolerant plant materials gracefully define transitions between the public and private realms.

A better approach is to view the landscape as three interlocking but separate zones: the public realm (the street, parkway, and sidewalk); the transitional zone near the lot line; and the private realm beyond the lot line. When landscaping for these zones, a general rule of thumb is to strike a balance between privacy and transparency, visual interest and order. One can delineate the three zones through subtle but defined grade separations, which step up to the private realm of the home. Within each zone one can plant a different set of plant materials, to add further definition. The addition of shade trees, both within the public and private realms, can complete the outdoor room.

This approach accomplishes several goals:

- Clearly delineates zones without creating walls
- Maintains visual interest through variations in plant materials, grades, and limited hardscape
- Minimizes water consumption and maximizes contributions to local flora and fauna
- Enhances the living environment of both the public and private realms

LANDSCAPING AND PUBLIC RIGHT-OF-WAY GUIDELINES

- Use a range of low-water and drought-tolerant plant materials to provide visual interest.
- Employ subtle variations in grade to delineate transitions. Avoid the use of tall fencing (over 4') and shrubbery immediately adjacent to the sidewalk.
- Avoid water-thirsty turf grass. Use low-water and drought-tolerant ground covers instead (see suggested species list).
- Plant shade trees within the public realm, ideally spaced between 15' and 20' apart.

5.2 LANDSCAPING WITHIN THE SITE

Whenever possible, small lot designs should designate some fully private outdoor space for each dwelling. This can take the form of small interior yards, balconies, and roof decks. For these spaces, the emphasis should be placed on flexibility, rather than a sense of completion. For yard space, plant materials need not be too varied, so that residents may easily modify them to make them their own. For balconies and roof decks, size should be generous enough to create usable spaces.

5.3 PLANT MATERIALS

Ultimately the landscape should in some way enhance the natural environment of the neighborhood. Additionally it should be relatively low-maintenance. Drought-tolerant and native species satisfy both of these criteria. Requiring little maintenance once established, these kinds of plants can create visually appealing and ecologically sound landscapes. The following website offers suggested species, as well as sample landscapes to show possible groupings of plants: www.bewaterwise.com/Gardensoft/garden_gallery.aspx.

PLANTING GUIDELINES

- Apply mulch in between and around plants, both to conserve moisture and to eliminate bare earth, which can look unsightly and give the landscape a barren feel.
- Use low-water ground covers instead of high-water turf grass. However, avoid invasive ground covers such as English Ivy and Ice Plant. See above website for suggested species.
- Plant in groupings according to water needs.
- Maximize soft landscaping
- Incorporate existing natural features and topography



Groundcovers of Shrimp Pink Aloe and Senecio enhance and define the public realm without creating walls or barriers.



A boulevard planting of Deer Grass, Fescue, and low-water shade trees.



Narrow sideyards can pose problems of privacy and often fail to provide adequate access to air, light, and ventilation.

6.1 PRIVACY

With small lot developments come issues of privacy – not only for residents of the new townhouses, but also for those of neighboring properties. Improperly designed developments create situations in which balconies overlook neighboring yards or face other balconies, and windows face directly onto neighboring windows. Small lot designs should maximize access to private outdoor space, light, and views, while ensuring an adequate level of privacy of all residents. This will require particular attention to the orientation and spatial form of the development, distances between walls, and the location of windows and balconies.

PRIVACY GUIDELINES

- Windows and balconies should not face or overlook each other.
- When possible, minimize the number of windows overlooking into neighboring interior private yards. Otherwise use translucent glass and/or screen the windows with landscaping.

6.2 AIR, LIGHT, AND VENTILATION

The small lot ordinance minimizes the size of side, rear, and front yards in order to make townhouse construction feasible. While allowing for increased density, the reductions make providing access to air, light, and ventilation more complicated. Thus, architects and builders must take full advantage of three-dimensional space to create environments that are livable. Key criteria for natural light and ventilation are that the building’s orientation and configuration, and the placement of windows allow for:

- daylight to reach all living space for part of the day, to the extent possible;
- adequate cross ventilation from cross breezes when windows are open.

Certain configurations lend themselves better than others to meeting these criteria. In general, one should avoid configurations that rely on narrow sideyards (less than 6 feet from building

face to building face) for access to air and light. Look to provide courts, niches, alcoves and other spaces to allow for access to air, light, and ventilation.

6.3 SERVICES

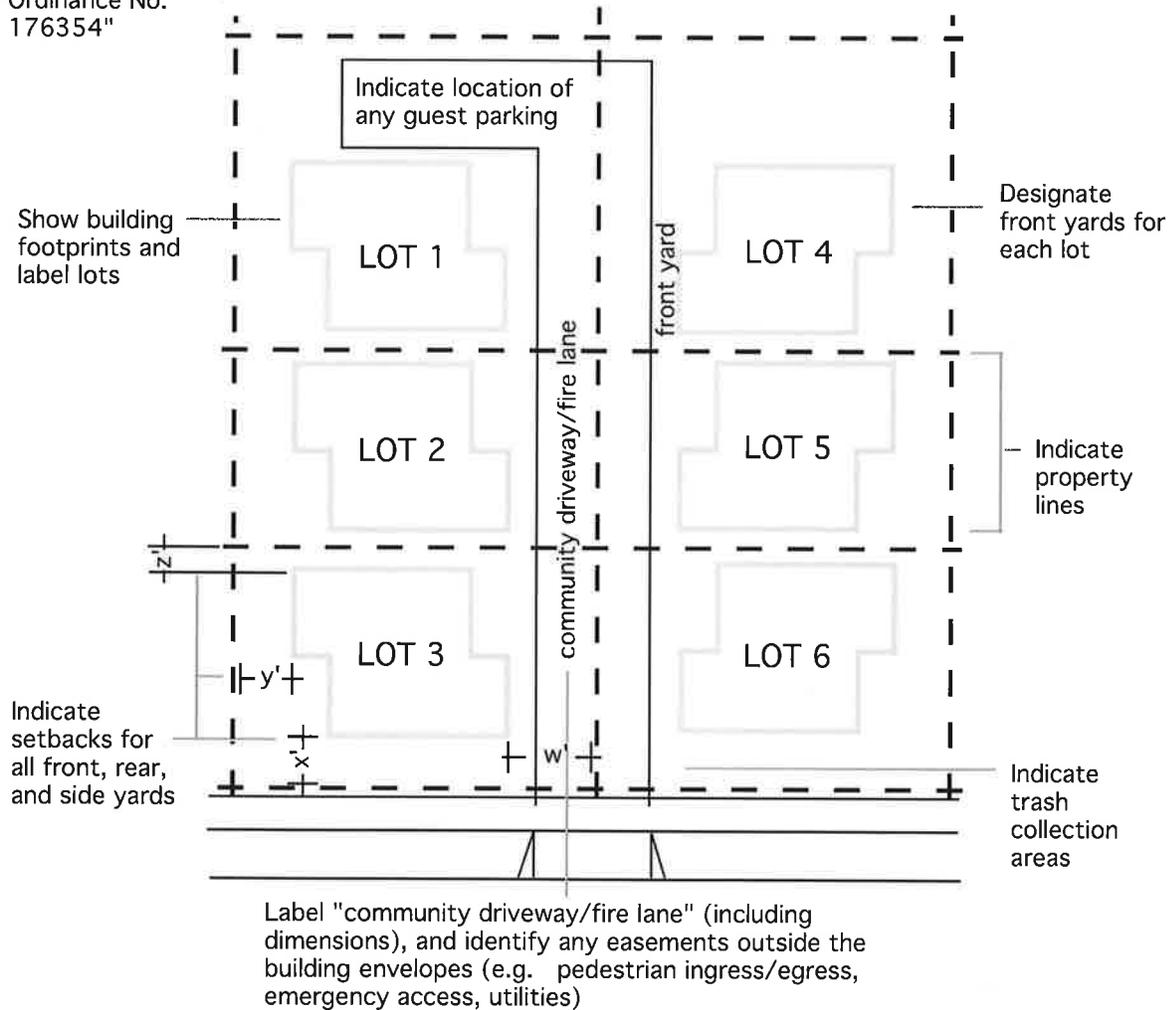
With small lot developments come a concentration of service and utility facilities – garbage storage, vents, meters and transformers. To minimize impact on adjacent dwellings and the surrounding neighborhood, small lot designs should attempt to locate these facilities in areas that are unobtrusive, and in ways that integrate them into the surroundings. Ideally, locations for service should be consolidated.

SERVICE GUIDELINES

- Whenever possible, consolidate servicing areas (i.e. trash) where they are easily accessible but do not adversely impact adjacent residences
- Screen trash pickup areas with landscaping so that they blend into the surroundings as much as possible
- Locate transformers, utility meters and HVAC equipment to the rear of dwellings whenever possible. If this is not possible, ensure that they are not visible from the public right of way.

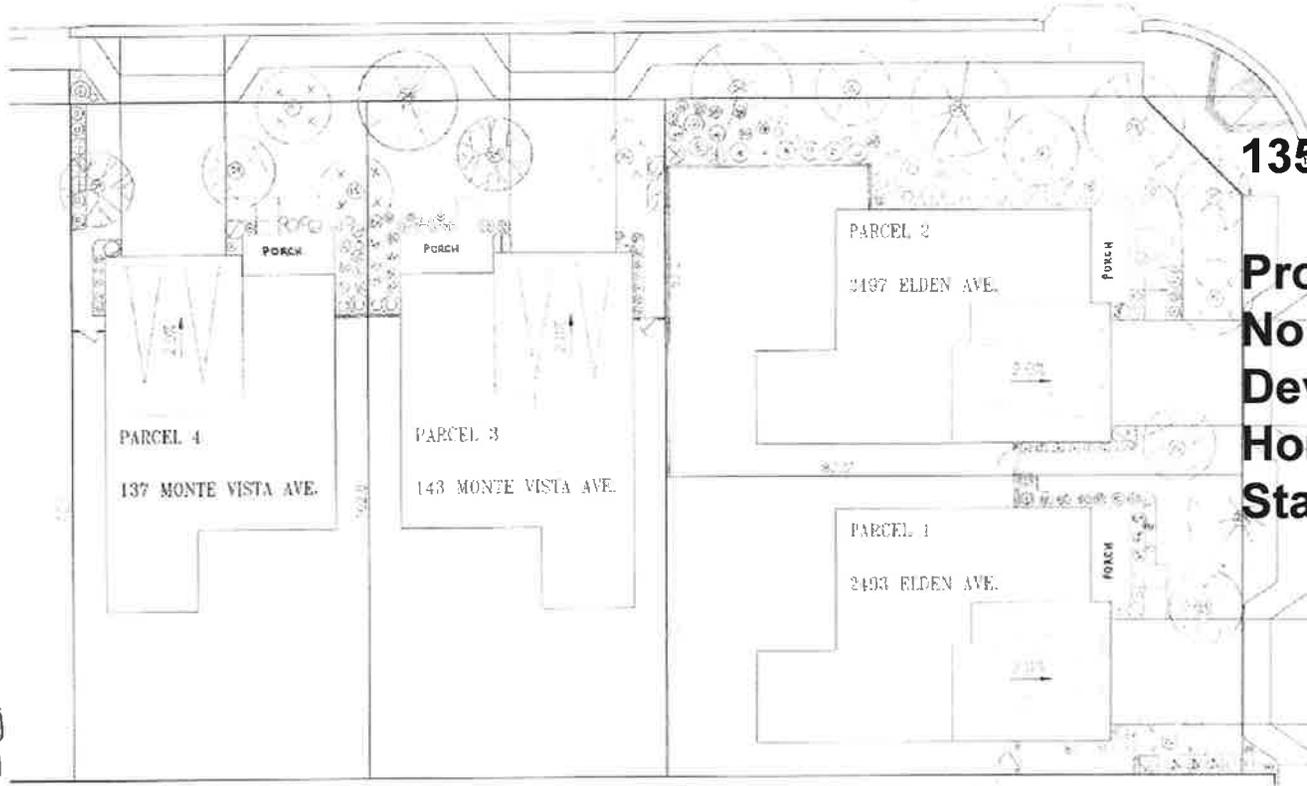
VESTING TENTATIVE
TRACT MAP for SMALL LOT
SUBDIVISION PURPOSES¹

Include in Notes
Section:
"Note: Small
Lot Single Family
Subdivision in
the ___ Zone,
pursuant to
Ordinance No.
176354"



1. All other information required by Sec. 17.00 for filing is also required but is not shown in this example.

MONTE VISTA AVENUE



135 Monte Vista Ave.

Project Site Area: 0.21 Acre

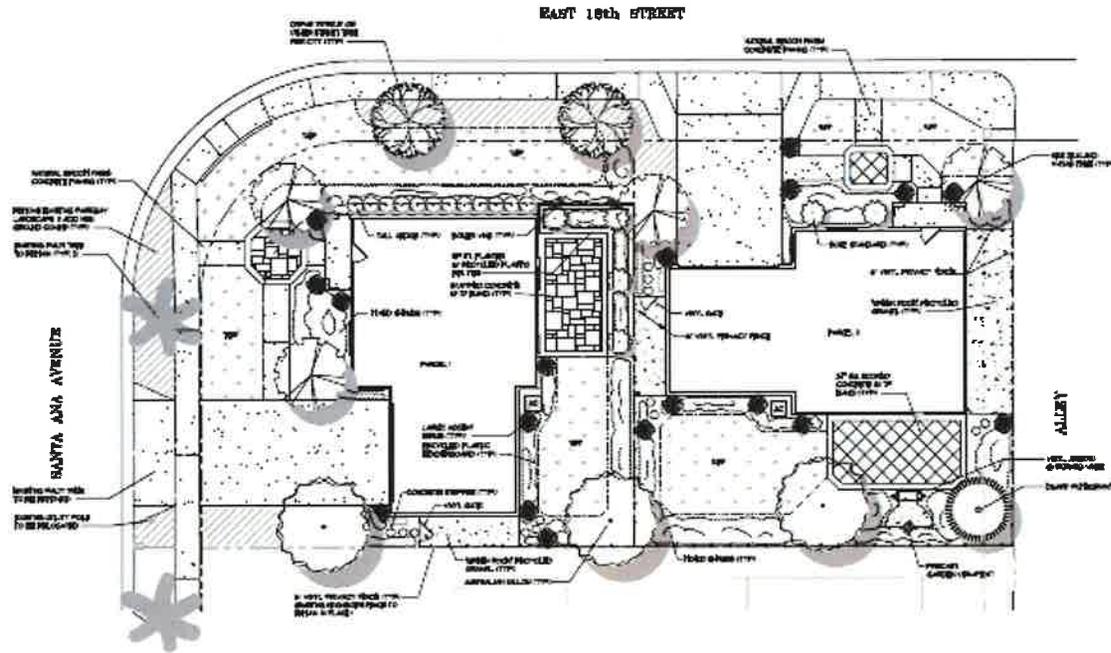
No. of Units: 4

**Developer: Harbinger
Homes, Inc.**

Status: Under Construction

-55-





1596 Santa Ana Ave.

Project Site Area: 0.194 Acre

No. of Units: 2

Developer: RSI

Status: Construction Completed

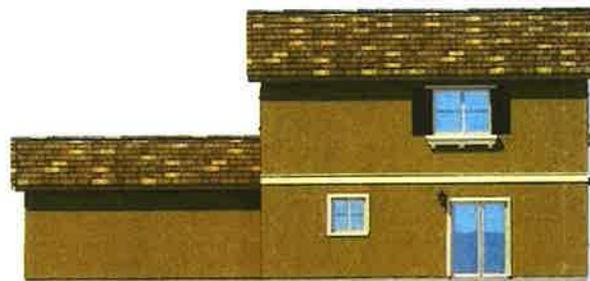
-56-



Front Elevation



Right Elevation



Rear Elevation



Left Elevation

-57-



2157 Tustin Ave.

Project Site Area: 1.2 Acres

No. of Units: 14

Developer: Matt White

Status: Approved



2590 Orange Ave.

Project Site Area: 0.20 Acre

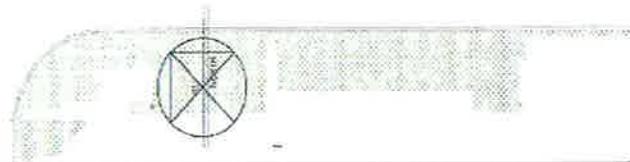
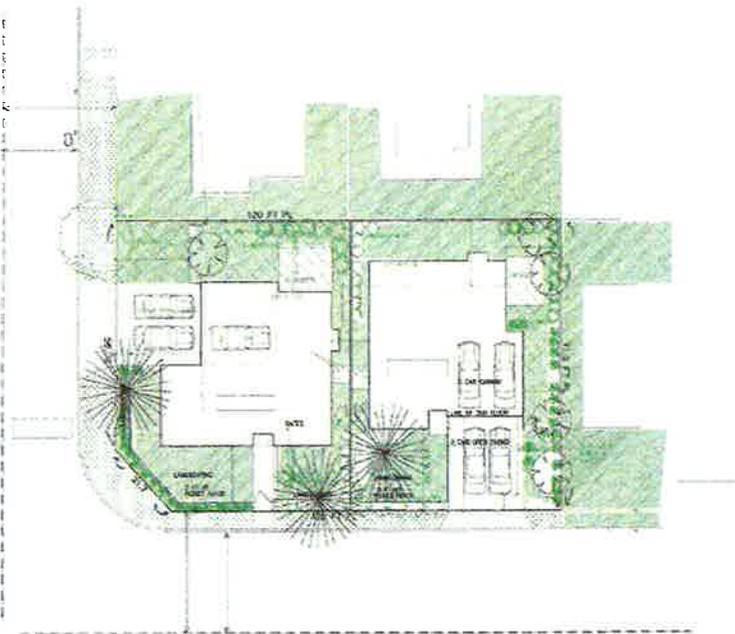
No. of Units: 2

**Developer: Jim Marino,
Marino Investments**

Status:



-58-



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California

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PAID:	144.00



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FIRST AMERICAN TITLE COMPANY
NATIONAL HOMEBUILDER SERVICES
SUBDIVISION DEPARTMENT



2

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

JACKSON, DeMARCO, TIDUS &
PECKENPAUGH (SLM)
2030 Main Street, Suite 1200
Irvine, CA 92614

45

LA 66782

(Space Above for Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
GATSBY HOLLYWOOD**

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
GATSBY HOLLYWOOD

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SUBORDINATION

EXHIBIT A - APPROXIMATE LOCATIONS OF EXCLUSIVE USE AREA
UTILITY VAULTS

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS**

FOR

GATSBY HOLLYWOOD

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS is made by MH WILCOX, LLC, a Delaware limited liability company, hereinafter referred to as "Declarant"

P R E A M B L E:

A. Declarant owns certain real property located in the City of Los Angeles, County of Los Angeles, State of California, more particularly described as follows:

Lots 1 to 34, inclusive, of Tract No. 66782, as shown on a Subdivision Map, recorded in Book 1354, at Pages 42 to 46, inclusive, of Maps, in the Office of the Los Angeles County Recorder.

B. Declarant has deemed it desirable to impose a general plan for the improvement and development of all of the Lots (as hereinafter defined) located within the Properties (as hereinafter defined), through the creation of certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens, and charges all running with the Properties as hereinafter set forth.

C. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following easements, restrictions, covenants, conditions, and equitable servitudes, all of which are imposed for the purpose of uniformly enhancing and protecting the value, attractiveness, and desirability of the Properties in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all Persons having any right, title, or interest in the Properties, or any portion thereof, their heirs, successors, and assigns, and shall inure to the benefit of every portion of the Properties and any interest therein, and shall inure to the benefit of and be binding upon Declarant and its successors in interest, and each Owner (as defined herein) and his or her respective successive Owners, and may be enforced by Declarant or by any Owner.

**ARTICLE I
DEFINITIONS**

1.1 **ARCHITECTURAL RULES.** Architectural Rules means the rules or guidelines setting design standards and procedures for submission of Improvement plans for Committee approval.

1.2 **CITY.** City means the City of Los Angeles, California, its various departments, divisions, employees and representatives.

1.3 **CLOSE OF ESCROW.** Close of Escrow means the date on which a deed conveying any Lot in the Properties from Declarant to an Owner is Recorded in the Office of the Los Angeles County Recorder.

1.4 **COUNTY.** County means the County of Los Angeles, California, its various departments, divisions, employees and representatives.

1.5 **COMMITTEE.** Committee means the Architectural and Landscape Committee formed pursuant to Article V hereof.

1.6 **DECLARANT.** Declarant means MH WILCOX, LLC, a Delaware limited liability company, its successors, and any Person to whom it assigns any of its rights as Declarant by written assignment. For purposes of this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, consolidation, sale of stock, operation of law, or otherwise. Declarant may determine, in its sole discretion, the time, place and manner by which is discharges its obligations and exercises its rights under this Declaration.

1.7 **DECLARATION.** Declaration means this instrument as is or as it may be amended or restated.

1.8 **FAMILY.** Family means one or more natural Persons related to each other by blood or legally related to each other by marriage or adoption, or a group of Persons not all so related, but who maintain a common household in a Residence.

1.9 **FANNIE MAE.** Fannie Mae means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1979 and its successors.

1.10 **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.11 **FREDDIE MAC.** Freddie Mac means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.12 **GINNIE MAE.** Ginnie Mae means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.13 **IMPROVEMENT.** Improvement means all structures and appurtenances thereto of every type and kind, including, but not limited to, the Residence and additions thereto, balcony covers, awnings, walkways, sprinkler pipes, drainage pipes and facilities, clustered mail box improvements, garages, roads, driveways, parking areas, satellite dishes and similar receiving and broadcasting devices, solar heating fixtures, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees and shrubs, poles, signs,

and exterior air conditioning and water softener fixtures and equipment and the visible surface of any such item, and the paint or finish on the surface thereof.

1.14 **INCLUDES, INCLUDING.** Whether capitalized or not, includes and including mean "includes without limitation" and "including, without limitation," respectively.

1.15 **LOT.** Lot means any residential Lot shown upon a Recorded Subdivision or Parcel Map or Maps of the Properties as it may be amended and subject to any applicable lot line adjustments.

1.16 **MAINTAIN, MAINTENANCE.** Whether capitalized or not, maintain and maintenance mean "maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided, however, that maintain or maintenance shall not include repair and replace(ment) where the context or the specific language of this Declaration provides another meaning.

1.17 **MAINTENANCE GUIDELINES, MAINTENANCE MANUAL OR MAINTENANCE RECOMMENDATIONS.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance of the Lots by the Owners, that may be provided to each Owner by Declarant or any governmental agency. Maintenance Guidelines include any Maintenance Manual initially prepared at Declarant's direction and containing Maintenance Recommendations prepared by Declarant pertaining to a Residence or Lot.

1.18 **MORTGAGE.** Mortgage means any Recorded instrument, including a deed of trust, by which a Lot or Lots are hypothecated to secure performance of an obligation.

1.19 **MORTGAGEE.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a Recorded assignment. Mortgagee includes the beneficiary under a deed of trust.

1.20 **MORTGAGOR.** Mortgagor means a person who has mortgaged his property. Mortgagor includes the trustor under a deed of trust.

1.21 **OFFICIAL RECORDS.** Official Records means the Official Records of Los Angeles County, California.

1.22 **OWNER.** Owner means the Person or Persons, including Declarant, holding fee simple interest of record to any Lot. The term "Owner" shall include sellers under executory contracts of sale but excludes Mortgagees. For purposes of Article II only, unless the context otherwise requires, "Owner" shall also include the Family, guests, invitees, licensees, and tenants of any Owner.

1.23 **PERSON.** Person means a natural individual, a corporation, or any other entity recognized under California law. When not capitalized, "person" refers only to natural individuals.

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1.24 **PROPERTIES.** Properties means the real property described in Preamble A of this Declaration.

1.25 **RECORD, RECORDED, RECORDATION, OR FILED.** Record, Recorded, Recordation or Filed means, concerning any document, the recordation or filing of such document in the Office of the County Recorder.

1.26 **RESIDENCE.** Residence means a detached building located on a Lot and designed and intended for use and occupancy as a dwelling for a single Family.

1.27 **RIGHT TO REPAIR LAW.** Right to Repair Law means Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

1.28 **RULES AND REGULATIONS.** Rules and Regulations means the current rules and regulations for the Properties that may be created by the Committee.

1.29 **SUPPLEMENTAL DECLARATION.** Supplemental Declaration means a Recorded instrument that imposes conditions, covenants, or restrictions, or reserves easements. A Supplemental Declaration may affect one or more Lots. Declarant may Record a Supplemental Declaration against any Lots that Declarant owns. A Supplemental Declaration may modify this Declaration as applied to the Lots made subject to the Supplemental Declaration.

1.30 **VA.** VA means the Department of Veterans Affairs of the United States of America and its successors.

**ARTICLE II
USE RESTRICTIONS**

All real property within the Properties shall be held, used, and enjoyed subject to the following limitations and restrictions, subject to the exemptions of Declarant set forth in Article VII and elsewhere herein:

2.1 **SINGLE FAMILY RESIDENCE.** Each Lot shall be used as a dwelling for a single Family and for no other purpose. Subject to any Owner occupancy requirements separately imposed by Declarant, an Owner may rent his Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing, and (b) subject to this Declaration.

2.2 **OWNERS ASSOCIATION.** The Owners may establish an "association," as defined in California Civil Code Section 1351(a), only with the prior approval of fifty-one percent (51%) of the Owners in the Properties. Such association may be formed to exercise the powers enumerated in California Civil Code Section 1363, including (1) maintaining and administering real property within the Properties, (2) administering and enforcing the Declaration and other governing documents, and (3) collecting and disbursing assessments and charges. Approval of the creation of an association under this Section further constitutes the requisite Owner approval of an amendment to this Declaration to provide for the rights and obligations of the association.

2.3 **IMPROVEMENTS.**

2.3.1 **Outdoors.** The following outdoor Improvements are prohibited unless installed as a part of the original construction of the Properties by Declarant, or with the approval of the Declarant or Committee: (a) clotheslines, except those installed out of sight of other Lots, (b) balconies, (c) patio or deck covers, (d) wiring, air conditioning equipment, water softeners, or other similar Improvements, (e) Improvements protruding through or on the surface of the walls or roofs of buildings, and (f) other exterior additions or alterations to any Residence or Lot.

2.3.2 **Installation of Front Yard Landscaping.** Declarant shall install front yard landscaping for each Lot in the Properties.

2.3.3 **Indoors.** No Owner or other resident of the Properties may line or coat any window with paint, foil, paper, newspaper, cardboard or other reflective material. However, for a period not to exceed ninety (90) days following the Close of Escrow for the sale of the Lot, the Owner may use clean white sheets as temporary window coverings pending installation of permanent draperies, shutters or other appropriate window coverings.

2.3.4 **Code Requirements.** All Improvements in the Properties must be completed in accordance with the Uniform Building Code and applicable laws, ordinances, regulations or requirements of governmental authorities with jurisdiction over the Properties.

2.4 **HEIGHT AND SETBACK REQUIREMENTS.** Pursuant to the City conditions of approval for the Properties, the maximum building height for buildings in the Properties is thirty-six (36) feet from the City approved pad grade. Contact City for specific minimum setback areas for each Lot. No Owner shall construct or cause to be constructed any Improvement on such Owner's Lot which violates these height and setback requirements.

2.5 **GRADING AND CONCRETE.** No Owner may alter the grading design or concrete areas installed in an Owner's Residence or in any portion of the Properties.

2.6 **NO LIABILITY.** Declarant shall not be liable or responsible for any damage that results from Improvements installed, constructed or modified by or at the direction of an Owner. Owners are advised to consult and use qualified consultants and contractors when installing, constructing or modifying Improvements in the Owner's Residence or on the Lot.

2.7 **MECHANICS' LIENS.** No Owner may cause or permit any mechanic's lien to be filed against another Owner's Lot for labor or materials alleged to have been furnished or delivered to such Owner, and any Owner who permits a mechanics' lien to be so filed shall cause the lien to be discharged no later than five (5) days after notice to the Owner from the Declarant or the Owner of the affected Lot.

2.8 **SIGNS.** Subject to California Civil Code Sections 712, 713 and 1353.6, no sign, poster, billboard, balloon advertising device or other display of any kind shall be displayed within the Properties or on any public street within or abutting the Properties except for the following signs, so long as they comply with applicable City requirements:

2.8.1 signs (regardless of size or configuration) used by Declarant in connection with construction, alteration or development of the Properties or sale, lease or other disposition of Lots in the Properties;

2.8.2 one (1) nameplate or similar Owner name or address identification sign for each Lot which complies with Committee rules;

2.8.3 one (1) sign for a Lot advising of the existence of security services protecting a Lot which complies with Committee rules;

2.8.4 one (1) sign which may be displayed on each Lot advertising the Lot for sale or lease; and

2.8.5 other signs or displays authorized by the Committee.

2.9 **VIEW OBSTRUCTIONS.** Neither Declarant nor any of its authorized agents, representatives or employees have made any warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of the Properties. The view from the Residence and Lot and any portion of the Properties may change or differ from renderings, computer generated models and other visual representations. These views may be affected or obstructed by (i) current or future construction outside the Properties; (ii) installation of Improvements, including, but not limited to, structures, fences, walls and landscaping installed by Declarant, Owners or owners of property outside the Properties and (iii) the growth of trees, landscaping or other vegetation within or outside the Properties. Owners acknowledge that, under California law, views are not subject to legal protection. Owners also acknowledge that this Declaration contains no provisions intended to protect the view from the Residence, Lot or any other portion of the Properties.

2.10 **OCCUPANCY OF VEHICLES.** No garage, trailer, camper, motor home, boat, or recreational vehicle shall be used as a dwelling in the Properties, either temporarily or permanently.

2.11 **NUISANCES.** Noxious or offensive activities are prohibited in the Properties and on any street abutting or visible from the Properties. The Committee is entitled to determine if any device, noise, odor, or activity constitutes a nuisance.

2.11.1 **Nuisance Devices.** Nuisance devices may not be kept or operated in the Properties or on any public street abutting the Properties, or exposed to the view of other Lots or streets. Nuisance devices include the following:

(a) All horns, sirens, whistles, bells or other sound devices (except security devices used exclusively to protect the security of a Residence or a vehicle and its contents);

(b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Prohibited Vehicles (defined below);

- (c) Devices that create or emit loud noises or noxious odors;
- (d) Construction or demolition waste containers (except as permitted in writing by the Committee);
- (e) Devices that unreasonably interfere with television or radio reception to a Lot;
- (f) Plants, trees, shrubs, seeds or any other landscaping materials infected with noxious insects or plant diseases;
- (g) The presence of any other thing in the Properties which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners, (iv) violate any law or provisions of this Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.11.2 Nuisance Activities. Nuisance activities may not be undertaken in the Properties or on any public street abutting the Properties, or exposed to the view of other Lots or streets. Nuisance activities include the following:

- (a) Hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Lots or public streets;
- (b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related devices, or live music performance;
- (c) The creation of unreasonable levels noise from a barking dog or other animal kept in the Properties (e.g., chronic daily nuisance barking by a dog over extended periods of time);
- (d) Repair or maintenance of vehicles or mechanical equipment, except in a closed garage or rear yard screened from view by other Lots;
- (e) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard;
- (f) Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Committee;
- (g) Any activity which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners to quiet enjoyment of their Lots, (iv) violate any law or provisions of this Declaration or any Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.12 ANTENNA AND SATELLITE DISH RESTRICTIONS. No Person may install on the exterior of any Residence or in any portion of the Lot any antenna or over-the-air receiving device except for an "Authorized Antenna." An Authorized Antenna is (i) an antenna

designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, or (iii) an antenna designed to receive television broadcast signals, and includes (iv) a mast supporting an antenna described in items (i), (ii), or (iii) above.

2.12.1 Restrictions on Installation. The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

2.12.2 Prohibitions on Installation. The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the restrictions. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

2.12.3 Review after Installation. The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section 2.12 and applicable law.

2.12.4 Restatement of Applicable Law. This Section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

2.13 ANIMAL RESTRICTION. No livestock, large reptiles, poultry or other animals of any kind shall be raised, bred or kept in the Properties. However, domestic dogs, cats, birds, or other customary household pets may be kept in the Properties, provided that they are not kept, bred, or maintained for commercial purposes or in numbers greater than allowed by City ordinance. Small household pets such as fish and caged birds may be kept in reasonable numbers so long as there is no external evidence of their presence in the Properties. Notwithstanding the foregoing, no Person may keep any animal that is obnoxious to residents in the vicinity or that is a nuisance under Section 2.11.1(g). Animals belonging to Owners, occupants, or their licensees, tenants, or invitees within the Properties must be either kept within an enclosure or on a leash at all times under the control of a Person capable of controlling the

animal. Furthermore, an Owner shall be absolutely liable to each and all remaining Owners, their Families, guests, tenants, and invitees for damages or injuries caused by any animals brought or kept upon the Properties by an Owner or by members of his Family, his tenants, or his guests. Each Owner shall clean up or remove any excrement or other unsanitary conditions caused by such Owner's animals on any portion of the Properties.

2.14 PARKING AND VEHICULAR RESTRICTIONS.

2.14.1 Definitions. The following definitions shall apply to parking and vehicular restrictions set forth in this Declaration:

(a) **Authorized Vehicle.** An "Authorized Vehicle" is an automobile, a sport-utility vehicle, a recreational vehicle, a passenger van designed to accommodate ten (10) or fewer people, a motorcycle, or a pickup truck having a manufacturer's rating or payload capacity of one (1) ton or less. The Committee has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations in order to adapt this restriction to other types of vehicles that are not listed above.

(b) **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles:" (i) commercial-type vehicles (for example, stakebed trucks, tank trucks, dump trucks, step vans, delivery trucks, concrete trucks and any other vehicles with manufacturer's rating or payload capacity in excess of one (1) ton), (ii) limousines, buses or vans designed to accommodate more than ten (10) people, (iii) inoperable vehicles or parts of vehicles, (iv) aircraft, (v) boats, (vi) water toys such as wave runners, (vii) boat trailers, (viii) other trailers designed for hauling vehicles, livestock, equipment or materials, (ix) any vehicle or vehicular equipment deemed a nuisance by the Committee, and (x) any other vehicle not classified as an Authorized Vehicle. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly authorized in writing by the Committee. The Committee has the power to identify additional vehicles as Prohibited Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles that are not listed above.

2.14.2 Parking and Garage Restrictions.

(a) **Prohibited Vehicles.** Prohibited Vehicles may not be parked, stored or kept in the Properties except for brief periods during loading, unloading, or emergency repairs. However, a resident may park a Prohibited Vehicle in the garage so long as the garage is kept closed and the presence of the Prohibited Vehicle does not prevent any Authorized Vehicle from being parked in the garage at the same time.

(b) **Garages.** Each Owner shall at all times ensure that the garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant. The garages shall be used for parking vehicles and storage of personal property only. Garages are not for use as additional living space. Garage doors must be kept closed except as necessary for entry or exit of vehicles or persons.

2.14.3 Shared Driveways. All Lots in the Properties are served by shared driveways constructed on portions of the Lots in the approximate locations as shown on the Final

Map (the "Shared Driveways"). Each Lot in the Properties shall have an appurtenant and nonexclusive easement over the Shared Driveways for pedestrian and vehicular access, ingress and egress reasonably necessary for the purpose of accessing a Residence. By acceptance of a deed to a Lot in the Properties, each Owner understands and accepts that the Shared Driveways are solely to be used for access to and from such Owner's Residence. No Shared Driveway in the Properties may be used for storage of personal property or for parking, other than for temporary purposes, not to exceed thirty (30) minutes in any twenty-four (24) hour period. No Owner shall unreasonably interfere with another Owner's exercise of easement rights over the Shared Driveways. Each Owner shall be responsible for the cost of repair of damage to the Shared Driveways to the extent caused by such Owner, or such Owner's Family, tenants or invitees. Each Owner shall also be responsible for an equal share of the costs associated with reasonable maintenance of the Shared Driveways that serve their Lot. If any Owner refuses to pay their share of maintenance or repair costs for the Shared Driveways, the remaining Owners shall have the right to perform the maintenance or repair and to sue the defaulting Owner for reimbursement of the costs of maintenance or repair, attorney's fees and the costs of suit. Shared Driveway Improvements, particularly the permeable pavers, shall be replaced with Improvements substantially the same materials as the original installed by Declarant unless prior written City approval is obtained and an alternative method of storm water management is installed or implemented.

2.14.4 **Repair, Maintenance and Restoration.** No Person may repair, maintain or restore any vehicle in the Properties, unless such work is conducted in the garage with the garage door closed. However, no Person may carry on in any portion of the Properties any vehicle repair, maintenance or restoration business.

2.15 **BUSINESS OR COMMERCIAL ACTIVITY.**

2.15.1 **Generally.** No Owner or other occupant of the Properties may undertake any activity on any Lot or on any other portion of the Properties for business or commercial purposes including manufacturing, mercantile, storage, vending, auctions, transient occupancy (such as vacation rental, hotel, or time-share), vehicle or equipment repair, or other non-residential purposes. Such activities are prohibited whether they are engaged in full- or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

2.15.2 **Exceptions.** This Section shall not be interpreted to prohibit any of the following:

- (a) The hiring of employees or contractors to provide maintenance, construction or repair of any Improvement consistent with this Declaration or any Supplemental Declaration;
- (b) Exercise by Declarant of any rights reserved to it under Article XV;
- (c) The provision of family home child care services as defined in California Health and Safety Code Section 1597.44, so long as such services comply with all applicable zoning requirements and state law;

(d) The operation of small home-based service businesses that comply with all of the following:

(i) The operator of the business lives in the Residence on a permanent, full-time basis;

(ii) When conducted in the Properties, business activities take place solely inside the Residence;

(iii) Visits by clientele or suppliers are limited to regular business hours and clientele and suppliers park their vehicles outside the Properties or in the garage on the Lot;

(iv) The activity complies with all laws, regulations and ordinances applicable to the Properties, including zoning, health and licensing requirements;

(v) The activity otherwise complies with the Declaration and is consistent with the residential character of the Properties;

(vi) The operator of the business posts no signage anywhere in the Properties;

(vii) Other than visits by clientele or suppliers, there is no visible evidence in the Properties of the activity; and

(viii) The activity does not generate noise or odors that are apparent outside the Residence.

2.16 **TRASH.** Trash must be stored in sanitary trash containers. No trash or containers may be left or stored outdoors. However, trash containers may be set out at curbside for a reasonable period of time on trash collection days (not to exceed twelve (12) hours before and after scheduled trash collection hours). At all other times, Owners must store trash containers in the garage until scheduled collection times.

2.17 **NO HAZARDOUS ACTIVITIES.** No activities shall be conducted on any Lot, and no Improvements shall be constructed on any Lot which are or might be unsafe or hazardous to any Person or property.

2.18 **NO MINING AND DRILLING.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred (500) feet below the surface of the Properties. No derrick or other structure designed for use in extraction of soil, rock or gravel, or for boring or drilling for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted upon any Lot.

2.19 **WATER AND SEWER SYSTEMS.** No individual water supply system, water softener system, or sewage disposal system shall be permitted on any Lot unless such system is designed, located, constructed, and equipped in accordance with the requirements, standards, and

recommendations of any applicable water district and any applicable governmental health authority having jurisdiction.

2.20 **DRAINAGE.** There shall be no interference with or obstruction of the established surface and subsurface drainage pattern(s) over any Lot within the Properties, unless an adequate alternative provision is made for proper drainage. Any alteration of the established drainage pattern must at all times comply with all applicable local governmental requirements. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time of the first Close of Escrow for the sale of the Lot by Declarant, or as shown on any plan approved by the Committee and may consist of earthen or concrete drainage swales, concrete channels, catch basins with underground drainage pipelines, roof-mounted gutters or downspouts ("**Surface Drainage Improvements**"). Established drainage includes drainage from Lot to Lot and to and from property lying outside the Properties. Each Owner shall maintain, repair, and replace and keep free from debris or obstructions all Surface Drainage Improvements, if any, located on the Owner's Lot, except those for which a public authority or utility is responsible. To the extent such drainage improvements are shared, the benefited Owners shall share in the cost of maintenance, repair and replacement thereof. Each Owner, by accepting a grant deed to his Lot, acknowledges and understands that in connection with the development of the Properties, Declarant may have installed one or more "drain lines" beneath the surface of such Owner's Lot ("**Sub-Drains**"). The Sub-drains and all appurtenant improvements constructed or installed by Declarant if any, provide for subterranean drainage of water from and to various portions of the Properties. To ensure adequate drainage within the Properties, it is essential that the Surface Drainage Improvements and the Sub-Drains, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, no Owner may install, alter, modify, remove or replace any Surface Drainage Improvements or Sub-Drains located within such Owner's Lot without first making alternative drainage arrangements approved by the Committee and applicable governmental agencies. Owner-installed irrigation systems must be installed and maintained to prevent excess runoff and accumulation of surface water.

2.21 **FURTHER SUBDIVISION.** No Owner shall further partition or subdivide his Lot; provided, however, that this provision shall not be construed to limit the right of an Owner (a) to rent or lease his entire Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (b) to sell his Lot; or (c) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be made expressly subject to this Declaration. Any failure by the lessee of such Lot to comply with the terms of this Declaration shall constitute a default under the lease or rental agreement.

2.22 **POLLUTANT CONTROLS; PLANTER BOXES; PERMEABLE PAVERS; SUMP PIT.** The Properties are subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System ("**NPDES**") adopted pursuant to the federal Clean Water Act. The City has adopted a Water Quality Management Plan for the Properties to reduce the discharge of pollutants to storm water facilities. The Water Quality Management Plan for the Properties may impose so-called best management practices ("**BMPs**") to regulate pollutant discharge by Owners. Each Owner shall comply with the applicable post-construction

BMPs. Copies of the NPDES General Permit and any BMPs that are applicable to the Properties are on file with the City.

2.22.1 **Planter Boxes.** Flow-through planter boxes have been installed on the Lots by Declarant to comply with NPDES and BMP requirements for the Properties. Each Owner is responsible for maintaining the flow-through planter boxes and water quality features thereof located on their Lot, which includes maintaining the vegetation and irrigation system and inspecting the planters periodically, as well as after storms, to ensure structural integrity and that a planter has not become clogged. Flow-through planter boxes may not be removed and may not be replaced with any Improvements that do not provide the same water quality features as those installed by Declarant without the prior written consent of the City.

2.22.2 **Permeable Pavers.** Shared Driveways in the Properties have been installed with permeable pavers that have water quality features to comply with NPDES and BMP requirements for the Properties. Permeable pavers must be repaired and replaced with substantially the same materials as originally constructed and must be maintained properly to allow the water quality features to work as intended.

2.22.3 **Sump Pit.** Certain Lots contain a sump pit that must be maintained by the Owner in accordance with the requirements of the City. Owners of affected Lots agree, but the acceptance of a deed to said Lot, that they understand the sump pit located on the Lot is for conducting site and roof water to the street and that they will be responsible for maintaining the pump system in proper working condition at all times for this purpose, including ensuring that any water which accumulates in the sump pit is removed by the sump pump or by other means.

2.23 **SOLAR ENERGY SYSTEMS.** Residences in the Properties have been constructed with a roof based solar energy system. Owners are responsible for maintenance of their solar energy system, including hiring an authorized installer to perform an annual inspection of the electrical components and periodically cleaning the solar roof with a garden hose from the ground level if necessary. Owners are solely responsible for monitoring costs associated with the solar energy system, if any. Owners who purchase their Residence from Declarant will receive a copy of the system warranty and shall be responsible to providing a copy to any subsequent purchasers during the warranty period.

2.24 **FLOOR AND ROOF LOAD LIMITATIONS.** The second floor and roof deck of the Residence are designed to support a forty (40) pound per square-foot live load plus a twelve (12) pound per square foot dead load as outlined in the Uniform Building Code. Prior to installation of any heavy furnishings or equipment into the Residence or on the roof, Owners are required to consult with a structural engineer or other qualified professional to confirm that the heavy furnishings or equipment will not exceed the structural design of the Residence and that the flooring system (whether on second story floors or roof) will not be overloaded, damaged or otherwise adversely affected by such heavy furnishings or equipment. Heavy furnishings or equipment include, without limitation, waterbeds, safes, weight benches, heavy exercise equipment, large fish tanks, spas and pool tables. Declarant does not accept responsibility for damage resulting from Owners placing anything in the second floor of the Residence that exceeds this weight limit.

**ARTICLE III
EASEMENTS AND ENCROACHMENTS**

3.1 **UTILITY EASEMENTS.** Each Owner agrees, by acceptance of his deed, that his Lot is granted subject to easements for utility installations and maintenance (a) as shown on the Recorded Final Subdivision Maps of the Properties, (b) of Record prior to the Close of Escrow for his Lot, and (c) or recorded by Declarant in accordance with the terms of the Grant Deed to Purchaser. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities. The utility easement areas of each Lot and all Improvements therein shall be maintained continuously by the Owner of such Lot, except for those Improvements for which a public authority or utility company is responsible.

3.2 **EXCLUSIVE USE EASEMENTS – UTILITY VAULTS.** Declarant reserves for the benefit of specified Owners exclusive easements over the Properties for access and use of utility vaults approximately located in the areas shown on *Exhibit A* attached hereto. Owners shall maintain the vault and any utilities therein that are not maintained by a utility company. The foregoing easements shall be conveyed by Recorded deed, and the easements so conveyed shall be appurtenant to and run with the Owner’s Lot, subject to the right of Declarant and its representatives to enter such areas as described in this Declaration.

3.3 **ACCESS TO DRAINAGE WAYS.** Each Owner agrees for such Owner and such Owner’s successors in interest, by the acceptance of the deed to a Lot, to permit free access by Owners of other Lots to drainage ways, if any, located on the Lot, which drainage ways affect said other Lots, when such access is essential for the maintenance of drainage ways for the protection or use of said other Lots.

3.4 **SIDEWALKS.** Declarant reserves, for the benefit of the City, every Owner, and each Owner’s Family, tenants and invitees, nonexclusive easements for pedestrian access, ingress and egress and City maintenance over the sidewalks constructed on a portion of each Lot in the Properties. This easement is appurtenant to and passes with title to every Lot in the Properties. No Owner may store anything in the sidewalks, block access over the sidewalks or affix any Improvement on the sidewalks. Declarant further reserves easements over each Lot in the Properties for the benefit of the City as reasonably necessary for maintenance of the sidewalks.

3.5 **DECLARANT EASEMENTS.** Declarant hereby reserves to itself, together with the right to transfer the same, nonexclusive easements over and under each Lot for construction, installation, operation, replacement, repair and maintenance of storm drain facilities and for other utility and service lines, systems and other devices and Improvements which may be reasonably necessary for the delivery of water, sewer, gas, telephone, electricity, television, cable television, telecommunications services and other utilities to the Properties (collectively, the *“Facilities”*). Each Owner by accepting a deed to a Lot expressly consents to the foregoing easements and rights of way and authorizes and appoints Declarant (so long as Declarant owns one or more Lots in the Properties) as attorney in fact of such Owner to execute and deliver all instruments necessary to convey such easements. The holders of the utility easements reserved hereby shall have the right to remove permanent Improvements including concrete, walls, fences and

landscaping from the easement area as necessary to the exercise of the easement. The cost of replacement or repair shall be borne solely by the Owner of the Lot.

3.6 **RIGHT OF ENTRY.** Declarant also has the right to enter the Lots (i) to complete and repair any Improvements located thereon as determined necessary or proper by the Declarant, in its sole discretion, (ii) to comply with requirements for the recordation of subdivision maps or lot line adjustments in the Properties, (iii) for repair of Improvements in accordance with the provisions of the Right to Repair Law, (iv) to accommodate grading or construction activities, and (v) to comply with requirements of applicable governmental agencies. Declarant shall provide reasonable notice to the Owner prior to entry into the Owner's Lot under this Section 3.4 except for emergency situations, which shall not require notice. Nothing in this Section 3.4 limits the right of an Owner to exclusive occupancy and control over the Lot. Any damage to a Residence or Lot caused by entry under this Section 3.4 shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of a Lot from Declarant, this right of entry shall automatically expire on the date that is twelve (12) years after the date of Recordation of the deed by which Declarant first conveyed title to an Owner.

3.7 **SUPPORT, SETTLEMENT AND ENCROACHMENT.** Should any Improvement installed by Declarant or any Owner on a Lot, including walls or fences, encroach on any portion of any adjacent Lot due to engineering errors, errors in original construction, settlement or shifting of structures or other inadvertent causes, the Owner of the adjacent Lot shall be deemed to have granted an appurtenant easement for such encroachment for so long as such Improvement, as constructed or reconstructed, shall remain in a useful state; provided, however, that no valid easement for encroachment shall exist if such encroachment occurred due to the negligence or willful misconduct of the Owner constructing or installing same.

3.8 **CROSS-LOT DRAINAGE.** Declarant reserves, for the benefit of the Properties and each Owner, perpetual, reciprocal easements over each Lot in the Properties for drainage of surface water.

3.9 **CLUSTERED MAILBOXES.** Declarant reserves nonexclusive easements over the Properties for (a) placement of mailbox clusters in the locations required by the United States Postal Service and local governmental agencies with jurisdiction over the Properties, (b) delivery, deposit and pickup of United States mail, and (c) access to and maintenance and replacement of mailbox clusters by the Owners of the Lots in the Properties. The actual locations of the easements reserved in this Section shall be determined by the as-built location of each mailbox cluster. The easements reserved hereby are appurtenant to each Lot in the Properties, as necessary to ensure the Owners reasonable access to their respective mailboxes. The Owners of mailboxes in a mailbox cluster shall share equally in the costs of maintenance and replacement of the common components of the mailbox cluster. Each Owner shall be solely responsible for maintenance and replacement of his mailbox.

**ARTICLE IV
LANDSCAPE, IRRIGATION, AND MAINTENANCE**

4.1 **EXTERIOR MAINTENANCE AND REPAIR; OWNER'S OBLIGATIONS.** Except for any areas maintained by a community facilities district, special tax assessment district or any other governmental entity, each Owner shall maintain his Lot and all Improvements

thereon in clean, neat and attractive condition at all times, consistent with the requirements of this Declaration and applicable City ordinances. Declarant has planted or will plant street trees on or adjacent to Lots within the Properties as required by the City. Any such tree may not be removed or replaced with a tree of a different species or a new tree added without the prior approval of the City. Each Owner is responsible for maintaining and irrigating the street trees and other landscaping located within such Owner's Lot. In addition, each Owner is responsible for maintaining all turf and irrigation facilities located within such Owner's Lot and any vines affixed to walls separating the Lots. Further, Owners shall maintain their roof decks and balconies free from debris and clutter. Roof decks and balconies are not intended to be used for storage of personal property and are subject to any rules and regulations promulgated by the Committee. In addition, Owners are responsible for maintaining lighting installed on the exterior of their Residence in good working order to provide common lighting for the Properties and for the costs to deliver electricity thereto. All Owners benefited by a clustered mail box accompanying structure shall share equally in the cost of maintenance thereof in accordance with Section 3.9 of this Declaration.

4.2 PERIMETER WALL MAINTENANCE. Any wall or fence that is constructed by Declarant on the perimeter of the Properties is a "Perimeter Wall." Each Owner shall maintain all sides and surfaces and the structural integrity of that portion of any Perimeter Wall which encloses the Owner's Lot; provided, however, that the Owners of Lots along the west side of the Properties and the Owner of Lots adjacent to Lot 35 have the common law right of contribution from the owners located outside the Properties who share in the use of said Perimeter Walls. If a portion of a Perimeter Wall is damaged or destroyed, the Owner of the damaged portion shall promptly repair or reconstruct the damaged portion using the same design and identical or substantially equivalent materials as used in the original construction.

4.3 PARTY WALLS. Each wall or fence that separates adjoining Lots is a party wall ("**Party Wall**") and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

4.3.1 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots separated by the Party Wall. However, each Owner shall be solely responsible for repainting or refinishing the surface of any Party Wall that faces the Owner's Lot.

4.3.2 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot which is affected thereby shall contribute equally to the cost of restoration thereof, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

4.3.3 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section is appurtenant to the land and passes to such Owner's successors in title.

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**ARTICLE V
ARCHITECTURAL AND LANDSCAPE COMMITTEE**

5.1 **GENERAL DUTIES.** The Architectural and Landscape Committee, sometimes referred to herein as the Committee, shall have the following general duties and authority:

5.1.1 **Rule Making.** The Committee may adopt, amend and supplement standards, procedures, rules and guidelines (collectively, "*Architectural Rules*") that (i) concern design and materials standards, rules and guidelines for the development, erection, construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of the visible exterior of any Improvement, including any Residence or Lot, or any other activity within the jurisdiction of the Committee pursuant to this Declaration ("*Construction Activity*"), (ii) set forth procedures for the submission of plans for approval, (iii) require a reasonable fee ("*Review Fee*") payable to the Committee for any costs involved to accompany each application for approval, and (iv) specify additional factors which it will take into consideration in reviewing submissions. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including floor plans, site plans, drainage plans, elevation drawings, and description or samples of plantings, exterior materials and colors.

5.1.2 **Review of Construction Activities.** Subject to Section 5.2 of this Declaration, no Construction Activities shall be commenced or maintained on the exterior of the Residence and all portions of the Lot located outside the Residence until plans and specifications showing the nature, design, kind, shape, height, width, color, materials, location and other aspects of the proposed Improvement have first been submitted to and approved in writing by the Committee.

5.2 **EXEMPTIONS FROM COMMITTEE REVIEW.** The Declarant shall not be required to seek or obtain approval of the Committee with respect to any of its activities, including any activity which would be classified as a Construction Activity in the absence of this Section. Each other Owner, as well as each tenant of an Owner, must obtain Committee approval in the manner provided herein for any Construction Activity in the Properties, along with all required approvals of the City, the County, and any approvals required under the Declaration.

5.3 **MEMBERS OF COMMITTEE.** The Committee shall consist of three (3) members. The initial members shall be representatives of Declarant. Declarant shall have the unrestricted right to appoint and remove all the members the Committee and to fill any vacancies on the Committee until the "Turnover Date," which shall be either (a) the date on which Close of Escrow has occurred for the last sale by Declarant of a Lot in the Properties, or (b) the date on which Declarant delivers written notice of its withdrawal from the Committee to a majority of the Owners, whichever occurs first. Declarant may at any time assign in writing such powers of removal and appointment to the Owners, in whole or in part, subject to such terms and conditions as Declarant may impose, if any. After the Turnover Date, the Owners other than Declarant shall have the power to appoint and remove all of the members of the Committee pursuant to Section 5.4 below. With the exception of Committee members appointed by Declarant, Committee members must be Owners. On the Turnover Date, any representatives of Declarant remaining on the Committee shall be deemed to have automatically resigned from the Committee without further action of any kind and Declarant shall have no further right to

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participate on the Committee or enforce any of the covenants, conditions or restrictions of this Declaration.

5.4 ELECTION OF COMMITTEE MEMBERS. After the Turnover Date, appointment of any member of the Committee by the Owners shall be by election conducted as described below. If the Owners determine that they do not want an active Committee after the Turnover Date, the Owners shall have the right to vote to make the Committee dormant if Owners of fifty-one percent (51%) of the Lots agree to do so. If the Committee is ever made dormant pursuant to this Section, any provisions in this Declaration concerning the powers of the Committee shall not apply until and unless the Owners vote by the same percentage to make the Committee active again.

5.4.1 Voting Rights. Each Owner of a Lot shall be entitled to cast one (1) vote for every Lot owned. Votes may be cast in person or by written proxy. Proxies shall be revocable and shall automatically be invalid after completion of the meeting for which the proxy was filed.

5.4.2 Notice of Election. After the Turnover Date, any Owner, including Declarant (whether or not Declarant is entitled to cast a vote), may call for an election meeting by (i) mailing to all Owners, or (ii) posting in at least two locations within the Properties which are conspicuous and readily accessible to all Owners, a written notice specifying the date, time, location and purpose of the meeting. Such notice shall be mailed or posted at least ten (10) and not more than thirty (30) days before the meeting is to be held.

5.4.3 Quorum. A quorum for any such meeting shall be the presence in person or by proxy of no fewer than twenty-five percent (25%) of all Owners entitled to cast a vote ("**Qualified Owners**"). Absent a quorum, the Qualified Owners who are present at the noticed meeting may adjourn the meeting to a date, time and place specified prior to adjournment which is no less than five (5) and no more than thirty (30) days after the time of the noticed meeting. A quorum at such later "adjourned meeting" shall be the presence in person or by proxy of no fewer than ten percent (10%) of all Qualified Owners.

5.4.4 Conduct of Meeting. If a quorum is present at any meeting or adjourned meeting, the first item of business thereat shall be the selection of a Director of Election, who shall preside over the conduct of the meeting. The Qualified Owners shall act by majority vote of a quorum, except that members of the Committee shall be elected by plurality such that the individual receiving the highest number of votes shall be elected to fill one vacancy, the individual receiving the next highest number of votes shall be elected to fill a second vacancy (if any), and the individual receiving the next highest number of votes shall be elected to fill a third vacancy (if any).

5.4.5 Term of Office. The term of office of each Committee member elected pursuant to this Section 5.4 shall be two (2) years, commencing on the date of election and continuing until a successor is elected as provided above. Any Committee member may succeed himself, and there shall be no limit to the number of terms of any member. In addition, any Committee member may be removed from office for any reason at any time by election of the Qualified Owners noticed and conducted pursuant to this Section 5.4, provided that the member is afforded prior personal notice (by mail or otherwise) of his proposed removal and a reasonable

opportunity to be heard at the election; and further provided that any removal shall require approval by majority vote of at least a quorum of Qualified Owners.

5.5 **MEETINGS OF THE COMMITTEE.** The Committee shall meet as necessary to perform its duties hereunder. The vote or the written consent of a majority of the Committee shall constitute an act of the Committee.

5.6 **SUBMITTALS TO COMMITTEE.** Persons submitting proposals or plans and specifications ("**Application**") to the Committee (such Person is referred to in this Article V as the "**Applicant**") must obtain a dated, written receipt for such plans and specifications and furnish the Committee with the address to which further communications from the Committee to the Applicant are to be directed. Until changed by the Committee or until the automatic resignation of Declarant's representatives therefrom pursuant to Section 5.3 above, whichever occurs first, the address for submittal of plans and specifications shall be Declarant business address c/o the Committee. The form of Application used by the Committee may include spaces allowing "Adjacent Owners" to sign or initial the Application confirming that they have been notified of the application. The Committee may establish a definition of "Adjacent Owners" in its Architectural Rules. Applications will be complete and may be approved or disapproved by the Committee even if all of the Adjacent Owners do not initial the Applications so long as the Applicant certifies that the Applicant has asked the Adjacent Owners to sign the Application. The requirement that the Applicant attempt to obtain the signatures of Adjacent Owners is intended only to provide notice of the pending Application to the Adjacent Owners. It does not create in the Adjacent Owners any power to approve or disapprove the Application by signing or withholding a signature. Only the Committee may approve or disapprove an Application.

5.7 **APPROVAL AND DISAPPROVAL.** The Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration, addition or other Construction Activity on the basis of satisfaction of the Committee with the grading plan; the location of the Improvements on the Lot; the finished ground elevation; the color scheme, finish, design, proportions, architecture, shape, height, style, and appropriateness of proposed Improvements; the effect on adjoining Lots; the materials to be used; the kinds, pitch or type of roof proposed; the planting, landscaping, size, height, or location of vegetation on a Lot; and on the basis of aesthetic considerations and the overall benefit or detriment to the Properties generally which would result from such Improvement, alteration, addition or other Construction Activity.

5.8 **NO WAIVER OF FUTURE APPROVALS.** The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

5.9 **TIME REQUIREMENTS.** Until receipt by the Committee of all plans, specifications or other materials deemed necessary by the Committee, the Committee may postpone review of any plans submitted for approval. Within forty-five (45) days of its receipt of all such materials, Committee approval or disapproval and the reasons therefor shall be transmitted by the Committee to the Applicant at the address set forth in the application for

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approval. Any application submitted pursuant to this Article V shall be deemed approved, unless the Committee's written disapproval or a request for additional information or materials is transmitted to the Applicant within forty-five (45) days after the date of receipt by the Committee of all required materials. The Committee approval for any particular Construction Activity shall expire and the plans and specifications therefor shall be resubmitted for Committee approval pursuant to this Article V if substantial work pursuant to the approved plans and specifications is not commenced within six (6) months of the Committee's approval of such Construction Activity. All Construction Activities shall be performed as promptly and as diligently as possible and shall be completed within such reasonable period of time specified by the Committee.

5.10 PRE-APPROVALS. The Committee may provide for the pre-approval of certain specified types or categories of Construction Activities, provided that such pre-approved Construction Activities are implemented by the affected Owner in conformance with the standards for design, materials and other criteria established for such pre-approved Construction Activities. The Architectural Committee may adopt, supplement or amend the Architectural Rules to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved Construction Activities.

5.11 VARIANCE. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Architectural Rules including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Committee, and become effective on Recordation. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Lot. The Committee's written variance shall be Recorded against the Applicant's Lot in the Official Records of the County. The cost of Recording the variance shall be borne solely by the Applicant.

5.12 NONCONFORMITY. In the event an Improvement that requires the approval of the Architectural Committee is (a) commenced or completed without prior written approval by the Committee, or (b) an Improvement is not completed within the time limit established by the Committee in its approval, or (c) an Improvement is not completed in substantial conformance with the approved plans and specifications, then the Committee shall deliver a written notice of noncompliance or noncompletion to the violating Owner and the Architectural Committee shall be entitled to take appropriate action in law or in equity to correct the violation.

5.13 COMPENSATION OF MEMBERS. The members of the Committee shall receive no compensation for services rendered.

5.14 NON-LIABILITY OF COMMITTEE MEMBERS. By submitting an Application, each Applicant is deemed to agree that neither the Committee, nor the members

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thereof, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for:

5.14.1 any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;

5.14.2 any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or

5.14.3 any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to willful misconduct or gross negligence.

**ARTICLE VI
TERMINATION, AMENDMENT, AND SEVERABILITY**

6.1 **TERM; TERMINATION.** All the covenants, conditions, and restrictions contained in this Declaration shall run with the Properties and shall be binding on and enforceable by all Owners for a period of fifty (50) years after the Recordation of this Declaration and, thereafter, said covenants, conditions, and restrictions shall automatically be extended for successive periods of ten (10) years. However, except as provided in Sections 6.2 and 7.2, the Owners of sixty seven percent (67%) of the Lots by execution and Recordation of a written instrument may at any time after Declarant no longer owns a Lot in the Properties determine to amend, revoke or cancel all or any part of this Declaration. In making a determination to amend, revoke or cancel all or any part of this Declaration, each Owner shall be entitled to one (1) vote for each Lot owned and if any Lot is owned by more than Person, the vote of such Lot shall be cast as such Persons, among themselves determine.

6.2 **AMENDMENT BY DECLARANT.** Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow in the Properties, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any portion of the Properties) may unilaterally amend this Declaration or a Supplemental Declaration by Recording a written instrument signed by Declarant in order to (i) conform this Declaration or the Supplemental Declaration to the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac, (ii) amend the disclosures in Article VIII, (iii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Properties that have not yet been conveyed to the Association or for which there has been no Close of Escrow, as applicable, (iv) amend, replace or substitute any Exhibit to correct typographical or engineering errors, (v) include any Exhibit that was inadvertently omitted from the Declaration or Supplemental Declaration at the time of recording, (vi) comply with any City, County, State or Federal laws or regulations, (vii) correct any typographical errors, (viii) supplement this Declaration with provisions which pertain to rights and obligations of Declarant or Owners arising under the Right to Repair Law, and (ix) change any exhibit to this Declaration or portion of an exhibit to conform to as-built conditions.

**ARTICLE VII
EXEMPTION AND RIGHTS OF DECLARANT**

7.1 **IN GENERAL.** Declarant or its successors and assigns, intends, but shall not be obligated to undertake the work of constructing Residences and developing all of the Lots in the Properties. As used in this Article and its subparagraphs, the words "its successors or assigns" specifically does not include purchasers of Lots who are not expressly assigned Declarant's rights as "Declarant" under this Declaration in a recorded assignment. In order for the Properties to be established as a fully occupied residential community as rapidly as possible, no Owner shall do anything to interfere with Declarant's lawful activities, and nothing in this Declaration shall be understood or construed to:

7.1.1 Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from doing on any Lot owned by Declarant whatever Declarant determines to be necessary or advisable in connection with the development of the Properties, including the alteration of construction plans and designs as Declarant deems advisable in the course of development; or

7.1.2 Prevent Declarant, its successors or assigns, or Declarant's representatives, from erecting, constructing and maintaining on any portion of the Properties owned or controlled by Declarant, such structures as may be reasonably necessary to undertake or complete construction of the Properties, establishing the Properties as a residential community and disposing of the same by sale, resale, lease or otherwise; or

7.1.3 Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by Declarant, its business of developing, subdividing and grading Lots and constructing Residences and other Improvements in the Properties as a residential community and of disposing of Residences thereon by sale, lease or otherwise; or

7.1.4 Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from maintaining such sign or signs on any portion of the Properties owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Lots and Residences in the Properties; or

7.1.5 Prevent Declarant, its successors or assigns, at any time prior to acquisition of title to a Lot by a purchaser from Declarant, to establish on that Lot additional easements, licenses, reservations and rights-of-way to itself, to utility companies, or to others as may be reasonably necessary to the proper development and disposal of the Properties.

7.1.6 Prevent Declarant, its successors or assigns, from unilaterally modifying its development plan for the Properties, including constructing more or fewer Residences or Residences of larger or small sizes, values, or types.

7.2 **ASSIGNMENT OF DECLARANT'S RIGHTS.** The rights of Declarant hereunder may be assigned by Declarant in whole or in part, to any successor to all or part of Declarant's interest in the Properties. The provisions of this Article shall not be altered or

terminated without the prior written consent of Declarant until ten (10) years following the date on which Declarant no longer owns one (1) or more Lots in the Properties.

7.3 **EXERCISE OF RIGHTS.** Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

**ARTICLE VIII
DISCLOSURES**

Much of the information in this Article VIII was obtained from third parties such as governmental agencies and it is subject to change for reasons beyond Declarant's control. Therefore, Declarant does not guarantee the accuracy or completeness of any of the information in this Article VIII. Declarant is under no obligation to advise any Person of any change affecting the disclosures in this Article VIII. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties dealing with its physical condition, zoning, compliance with applicable laws, purpose for intended use, nor in connection with the subdivision, sale operation, or use of the Properties except as set forth below:

8.1 **NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given or made by Declarant or its agents in connection with the Properties, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as expressly provided in this Declaration, or as provided by Declarant to the first Owner of each Lot.

8.2 **PROPERTY LINES.** The boundaries of each Lot in the Properties are delineated on subdivision (tract) maps, lot line adjustments or parcel maps that are public records and are available at the County Recorder's office.

8.3 **UTILITY IMPROVEMENTS.** There may be above-ground and subterranean utility Improvements such as transformers, water, sewer, gas, electric and drainage facilities, telecommunications vaults and other visible Improvements necessary for the delivery of utilities or other services either on or adjacent to each Lot. Each Owner understands that the placement of such Improvements is dictated by the needs of the applicable utility or service provider, and the presence of such Improvements in the Properties is in accordance with easements created prior to or during the development of the Properties. Each Owner, by accepting a deed to a Lot in the Properties, understands that each Lot is subject to one or more such easements for placement of utility Improvements. No Owner may modify, remove or otherwise interfere with utility Improvements on any Lot or other portion of the Properties.

8.4 **ELECTRICAL POWER LINES.** Underground or overhead electric transmission and distribution lines and transformers are located in and around the Properties. Power lines and transformers produce extremely low-frequency electromagnetic fields ("**ELF-EMF**") when operating. For some time, there has been speculation in the scientific community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information

Dissemination Program ("**EMF-RAPID Program**") to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences ("**NIEHS**") issued a report to Congress summarizing its review of scientific data from over three hundred (300) studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>.

8.5 URBAN ENVIRONMENT. Living in a Residence within a densely populated community entails living in very close proximity to other persons and businesses, with attendant limitations on solitude. Owners may hear noise from adjacent Residences, including noise from showers, bathtubs, sinks, toilets or other sources of running water. Also, Owners may hear noise from items such as vacuum cleaners, stereos or televisions, or from people running, walking or exercising. Owners can also expect to hear noise from adjacent residential and commercial areas. Residents may also notice light entering the Residences from exterior sources including streetlights and parking lot lighting, and nearby residential and commercial buildings. Declarant has no control over the transmission of noise or light and their potential effects on Residences and Lots within the Properties.

8.6 LOT 35/ORCHARD GABLES COTTAGE. Lot 35 is the site of the historic Orchard Gables Cottage, which was constructed in 1904. The cottage was originally the home to U.S. Senator Cornelius Cole, who founded California's Republican Party and served as confidant to Abraham Lincoln. Declarant purchased the property and donated it to the Hollywood branch of the Los Angeles Community Redevelopment Agency ("**LACRA**") for preservation. The cottage is expected to be restored and opened to the community as an arts and education community center. Declarant makes no representations, warranties or guarantees concerning whether the cottage will actually be restored, or whether it will be used as a community center, or concerning the amount of noise, traffic, or other disturbances that Owners might experience from work associated with the restoration of the cottage or from the LARCA's and the public's use of Lot 35 now or in the future.

8.7 HIGHWAYS AND MAJOR THOROUGHFARES. Several highways and major thoroughfares are located within the vicinity of the Properties, which include without limitation, Sunset Boulevard, Santa Monica Boulevard, Melrose Avenue and the 101 Freeway. Declarant has no control over the use, maintenance or care of these highways and thoroughfares. Owners may experience noise, dust and traffic within and in the vicinity of the Properties based on the public's use of these highways and thoroughfares.

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8.8 **SURROUNDING USES.** The Properties are located in an area that is experiencing rapid growth. This disclosure is intended to provide Owners with information on surrounding uses as of the date of Recordation. Uses in surrounding areas that may effect the Properties include the following:

- (a) *North – Apartment Buildings.*
- (b) *East – Police Substation and Apartment Buildings.*
- (c) *South -- Apartment Buildings.*
- (d) *West -- Apartment Buildings, Single Family Homes.*

8.9 **EARTHQUAKE FAULT ZONES.** California is subject to a wide range of earthquake activity. California has many known faults as well as yet undiscovered faults. Owners must evaluate the potential for future seismic activity that might seriously damage an Owner's Residence. A major earthquake, which some have predicted will occur in our lifetimes, could cause very serious damage to Residences, located even many miles from the epicenter of the earthquake. A more moderate earthquake occurring on a more minor fault, or on an undiscovered fault, could also cause substantial damage. Declarant makes no representations or warranties as to the degree of earthquake risk within the Properties. All Owners should read "The Homeowner's Guide to Earthquake Safety," which is published by the California Seismic Safety Commission and is available from their offices or by free download from their website at <http://www.seismic.ca.gov/> and consult with the City, County, other public agencies, and appropriate experts to evaluate the potential risk.

8.10 **SPECIAL DISTRICTS.** The Properties may at present lie within special tax districts, or they may be annexed to other special tax districts from time to time in the future. Owners are advised to consult the County Assessor's office for further information.

8.11 **SUPPLEMENTAL REAL PROPERTY TAXES.** The County Assessor has the authority to reassess new homes after the Close of Escrow based on the difference between its appraised value and the home's unimproved value for the period after escrow closes. The Assessor will issue a supplemental tax bill to Owners for the difference in the taxes due based upon the reassessment. Declarant has no control over the valuation, timing or the amount of the supplemental bill resulting from the reassessment. Owner is solely responsible for the payment of the supplemental tax bill.

The following notice is given pursuant to Section 1102.6c of the California Civil Code:

"California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes. The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay

these supplemental bills directly to the Tax Collector. If you have any question concerning this matter, please call your local Tax Collector's Office."

Neither Declarant nor any of its authorized agents, representatives, employees or sales people have made any representations or warranties regarding supplemental property taxes.

8.12 **MOLD.** Molds are simple, microscopic organisms, present virtually everywhere, indoors and outdoors. Mold can be any color, but is usually green, gray, brown or black. Mold requires a food source (including paper, wood, leaves or dirt), a source of moisture and a suitable temperature (generally 40-100 degrees Fahrenheit) to grow. Individuals are exposed to molds on a daily basis, and in most instances there are no harmful effects. However, the buildup of molds in the indoor environment may contribute to serious health problems for some individuals. Due to a variety of factors, including the fact that sensitivities to various types of molds and other potential contaminants vary from person to person, there are currently no state or federal standards concerning acceptable levels of exposure to mold. Sources of indoor moisture that may lead to mold problems include, but are not limited to: flooding, leaks, seepage, sprinkler spray hitting the Residence, overflow from sinks or sewers, damp basement or crawl space, steam from shower or cooking, humidifiers, wet clothes drying indoors, watering house plants, and clothes dryers exhausting indoors.

Each Owner should take precautions to prevent the growth of mold in the Residence from these and other sources. Preventative measures include, but are not limited to the following: (1) regularly cleaning the Residence; (2) regularly checking for accumulated moisture in corners and unventilated areas; (3) running fans, dehumidifiers and air conditioners to reduce indoor humidity; (4) stopping the source of any leak or flooding; (5) removing excess water with mops or a wet vacuum; (6) moving wet items to a dry, well ventilated area; (7) regularly cleaning and disinfecting indoor and outdoor surfaces that may contain mold; (8) having major appliances, including furnaces, heat pumps, central air conditioners, ventilation systems and furnace-attached humidifiers inspected, cleaned and serviced regularly by a qualified professional; (9) cleaning the refrigerator, air conditioner and dehumidifier drip pans and filters regularly and ensuring that refrigerator and freezer doors seal properly; and (10) avoiding over-watering of landscaping.

It is the Owner's responsibility to monitor the Residence on a continual basis for excessive moisture, water and mold accumulation. For additional information regarding mold, please refer to the following websites: California Department of Health Services - <http://www.dhs.ca.gov>; Centers for Disease Control and Prevention - <http://www.cdc.gov/nceh>; U.S. Environmental Protection Agency - <http://www.epa.gov>; Illinois Department of Public Health - <http://www.idph.state.il.us>; and Washington State Department of Health - <http://www.doh.wa.gov>.

**ARTICLE IX
DISPUTES WITH DECLARANT PARTIES**

9.1 **DISPUTES.** Any dispute between the any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative,

contractor, subcontractor, design professional or agent of the Declarant (each, a **"Declarant Party,"** and collectively the **"Declarant Parties"**), on the other hand, which dispute:

(a) Arises under this Declaration or otherwise relates to the Properties (including disputes regarding latent or patent construction defects); and

(b) Concerns an amount in controversy that is greater than Five Thousand Dollars (\$5,000),

shall be a "Dispute" for purposes of this Section. All Disputes shall be resolved in accordance with the following alternative dispute resolution procedures:

9.1.1 **Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by California Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed (**"Respondent"**) describing the nature of the Dispute and any proposed remedy (the **"Dispute Notice"**).

9.1.2 **Right to Inspect and Correct.** Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (a) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (b) enter the Properties to inspect any areas that are subject to the Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Properties to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in California Civil Code Section 1375 (the **"Calderon Act"**). The procedures established in the Calderon Act may be implemented before, during or after the procedure in this Section is implemented.

9.1.3 **Mediation.** If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation (**"Mediation Notice"**) in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (a) the American Arbitration Association (**"AAA"**) mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (b) the mediation procedures of any successor to the AAA in existence when the Dispute Notice is delivered, as modified by this Section, or (c) mediation procedures approved by the parties of any entity offering mediation services that are acceptable to the parties to the Dispute (each, a **"Party"** and collectively, the **"Parties"**). Except as provided in Section 9.1.5, no Person shall commence litigation regarding a Dispute without complying with this Section 9.1.3.

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the Parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any

Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each party to the Dispute shall submit a letter ("**Position Statement**") containing (i) a description of the Party's position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (A) the mediator extends the mediation period, or (B) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the parties.

(c) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) **Application of Evidence Code.** The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) **Parties Permitted at Mediation.** Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(g) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

9.1.4 **Mandatory Binding Arbitration.** Any Dispute between any Owner and a Declarant Party shall be resolved through the procedures established in this Title 7 Addendum.

Before an Owner institutes arbitration as provided in this Section (collectively referred to as "Proceedings") involving a Dispute, the Owner must first commence the Claim Process and proceed, in good faith, to resolve the Dispute using the Customer Service Program as set forth in the Maintenance Manual for the Community and by Mediation as set forth in Section 9.1.3.

(a) **Waiver of Trial by Jury.** By agreeing to resolve all Disputes through binding arbitration, Owner and Declarant each give up their right to have their respective claims and defenses decided by a judge or a jury. Instead, all Disputes will be decided by the arbitrator, or by the appeal arbitrator(s), if applicable.

(b) **Damages Pursuant to Title 7.** For all Disputes involving a Dispute, including a breach or non-compliance of a standard set forth in California Civil Code Sections 895 through 897, Owner is only entitled to actual damages. Actual damages are measured by the lesser of the (i) cost to repair or (ii) diminution in current value of real property caused by the nonconformity. Declarant shall not be responsible for, and shall be excused from, any obligation, damage, loss or liability to the extent that Declarant can demonstrate any of the affirmative defenses set forth in California Civil Code Section 945.5.

(c) **Rules Applicable to All Disputes.** Owner and the Declarant Parties shall use the procedures adopted by the Judicial Arbitration and Mediation Service ("JAMS") or such other entity offering alternative dispute resolution procedures as may be mutually acceptable to the parties; provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(i) **Location.** The Proceedings shall be held in the County in which the Lot is located.

(ii) **Qualifications of the Arbitrator.** The Proceedings shall be administered by a neutral and impartial person. The arbitrator shall be a retired judge or a member or former member of the California State Bar with at least fifteen (15) years experience as a practicing lawyer. The arbitrator shall not have any relationship to the parties or interest in the Lot.

(iii) **Appointment of the Arbitrator.** The arbitrator shall be appointed pursuant to the stipulation of the parties. If the parties cannot agree on the arbitrator, an arbitrator shall be appointed by the court with jurisdiction over the Proceedings.

(iv) **Expenses.** All fees charged by JAMS and the arbitrator shall be advanced by the Declarant Party. If the Declarant Party is the prevailing party in the Proceedings, the arbitrator may, in his or her discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct Owner to reimburse the Declarant Party all or part of the JAMS fee and arbitrator's fee advanced by the Declarant Party.

(v) **Participation by Other Parties.** Owner and the Declarant Party, to the extent either such party is defending a claim in the Proceedings may, if it chooses, have all necessary and appropriate parties included as parties to the Proceedings.

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(vi) Commencement and Timing of Proceedings. The Proceedings shall be commenced in a prompt and timely manner in accordance with the rules of the person or entity administering the Proceedings; or, if the rules do not specify such a date, then a date agreed to by the parties; or if the parties cannot agree, the arbitrator shall determine a date for the commencement of the Proceedings.

(vii) Rules of Law. The arbitrator must follow California substantive law (including statute of limitations). The arbitrator shall conduct all evidentiary proceedings in accordance with the rules of evidence, unless expressly waived by both parties. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(viii) Discovery. The parties shall be entitled to discovery, and the arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as a trial court judge.

(ix) Statutes of Limitation. Except for procedural issues, the Proceedings and the ultimate decisions of the arbitrator shall be subject to and bound by existing California case and statutory law, including but not limited to, applicable statutes of limitation established by Title 7.

(x) Motions. The arbitrator shall have the power to hear and dispose of motions, including but not limited to, demurrers, motions to dismiss, motions for judgment on the pleadings, post-trial motions and summary adjudication motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(xi) Record. A confidential stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(xii) Attorneys Fees and Costs. Each party shall bear its own attorneys' fees and costs, including expert witness costs, in the Proceedings.

(xiii) Written Decision. Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If either Owner or a Declarant Party requests it, the arbitrator must issue a reasoned award.

(d) ***Procedures for Appeal of Certain Cases.*** In any Proceedings in which a claim or arbitration award exceeds \$500,000 in value, Owner and a Declarant Party hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(i) Right of Appeal. There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

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(ii) Appellate Panel. An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(iii) Issues on Appeal. The only issues that may be considered on appeal are: (i) the award of money was excessive; (ii) the award of money was insufficient; (iii) the arbitrator awarded non-monetary relief that was inappropriate; and (iv) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(iv) Expenses and Costs on Appeal. The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Declarant Party, except as provided in Section 9.1.4(c)(iv) above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) days award costs of the nature provided in the Federal Rules of Appellate Procedure. If a Declarant Party is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and the JAMS Minimum Standards Of Procedural Fairness, include all or part of the JAMS fee and arbitrator's fee advanced by the Declarant Party in the award of costs on appeal.

(v) New Evidence. The appeal arbitrators may not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site or property involved in the Dispute.

(e) ***Federal Arbitration Act***. Owner and the Declarant Party acknowledge that because many of the materials and products incorporated into the home are manufactured in other states, this Contract evidences a transaction involving interstate commerce and the Federal Arbitration Act set forth in 9 U.S.C. § 1, et seq., now in effect and as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Contract. This Section is to be interpreted in accordance with *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 115 S.Ct. 834, *Basura v. U.S. Home Corp.* (2002) 98 Cal.App.4th 1205, and other Federal court rulings. Arbitration shall be conducted pursuant to the Federal Arbitration Act and, to the extent not inconsistent, the procedures set forth in this Section. References to California procedural law are for guidance and shall not be construed as a waiver of any rights of the parties under the Federal Arbitration Act.

STATUTORY NOTICE:

ARBITRATION OF DISPUTES. BY ACCEPTANCE OF A DEED TO A LOT, OWNER AND DECLARANT AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND OWNER AND DECLARANT ARE GIVING UP ANY RIGHTS OWNER AND DECLARANT MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, OWNER AND DECLARANT ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ADDENDUM. IF OWNER OR A DECLARANT PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, OWNER OR THE DECLARANT PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, OWNER AND DECLARANT AGREE THAT ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT AND OWNER EACH HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION, OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. DECLARANT AND OWNER HEREBY COVENANT AND AGREE THAT THEIR MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING ON

THEIR RESPECTIVE SUCCESSORS AND ASSIGNS AND UPON ALL PERSONS AND ENTITIES ASSERTING THEIR RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT OR OWNER AND THEIR SUCCESSORS AND ASSIGNS.

9.1.5 **Statutes of Limitation.** Nothing in this Section 9.1 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant Parties, and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 9.1.

9.1.6 **Agreement to Dispute Resolution; Waivers of Jury Trial.** DECLARANT AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 9.1 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 9.1, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY. THIS SECTION 9.1 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

9.1.7 **California Civil Code Section 1354.** Section 9.1 governs only the resolution of Disputes with Declarant Parties and shall not affect the subject matter of such Disputes. Unless the subject matter of a Dispute expressly involves enforcement of the Restrictions, such Dispute shall not be governed by the provisions of California Civil Code Section 1354, or any successor statute. Enforcement of Section 9.1 shall not entitle the prevailing party in any Dispute with a Declarant Party to recover attorney's fees or costs

9.2 **NO ENHANCED PROTECTION AGREEMENT.** No language contained in this Declaration or any Supplemental Declaration shall constitute, or be interpreted to constitute, an enhanced protection agreement ("*EPA*"), as defined in Section 901 of the California Civil Code. Further, no express or implied representations or warranties made by Declarant in any other writing are intended to constitute, or to be interpreted to constitute, an EPA.

**ARTICLE X
ENFORCEMENT OF RESTRICTIONS**

10.1 **ENFORCEMENT.** Violation of any provision of this Declaration and the continuation of any such violation may be enjoined, abated, or remedied by appropriate legal or equitable proceedings by any Owner, including Declarant (while Declarant owns any portion of the Properties) or the Committee (if formed). It is hereby agreed that recovery of damages at law for any violation of the Declaration would not be an adequate remedy.

10.1.1 **Violations Identified by Committee.** If the Committee determines that there is a violation of the Declaration, or that an Improvement which is the maintenance responsibility of an Owner needs maintenance, repair, restoration or painting, then the Committee, in addition to any other remedies set forth in this Declaration, may give written

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notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation. If an Owner does not perform such corrective action required by the Committee within the allotted time, then the Committee may, but is not required to, submit the enforcement dispute to alternative dispute resolution under the procedures set forth in Section 1354 of the California Civil Code.

10.1.2 Violations Identified by an Owner. If an Owner alleges that another Owner or other Person is violating the Declaration, the complaining Owner must first submit the matter to the Committee (if formed) for review and possible action before the complaining Owner may resort to resolution under the procedures set forth in Section 1354 of the California Civil Code, or litigation.

10.1.3 Legal Proceedings. Failure to comply with the Declaration is grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of a lien, or any combination thereof. However, the procedures established in Sections 10.1.1 and 10.1.2 above, and Section 1354 of the California Civil Code must first be followed, if they are applicable. It is hereby declared that for purposes of resolution of enforcement disputes under this Article, references in Civil Code Section 1354 to a "common interest development" shall mean and refer to the Properties, and references to an "association" shall mean the Committee.

10.1.4 Additional Remedies. The Committee may adopt a schedule of reasonable fees and penalties which, in its reasonable discretion, it may assess against an Owner for failure of the Owner or other occupant of the Owner's Lot to comply with the Declaration. The Committee may Record a notice of noncompliance for any violation of the Declaration if permitted by law. Fines may only be assessed after notice and hearing.

10.1.5 No Waiver. Failure to enforce any provision of the Declaration does not waive the right to enforce that provision, or any other provision.

10.1.6 Right to Enforce. The Committee or any Owner who is not at the time in default hereunder may enforce the Declaration in accordance with the procedure set forth in Section 1354 of the California Civil Code. Each remedy provided for in the Declaration is cumulative and not exclusive or exhaustive and Declarant or any Owner shall have the right to collect damages and to enjoin any violation or threatened violation in a court of competent jurisdiction.

10.2 COSTS AND ATTORNEYS' FEES. If an action is instituted in a court of competent jurisdiction to enforce any of the covenants, conditions, restrictions, or easements contained in this Declaration, the party against whom the judgment, decree, order or declaration is entered shall, and agrees to, pay all costs of suit and a reasonable attorneys' fee, such as may be established by said court.

**ARTICLE XI
MISCELLANEOUS**

11.1 CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every person who owns, occupies, or acquires any right, title, estate, or interest in or to any Lot or other portion of the

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Properties does and shall be conclusively deemed to have consented and agreed to the reasonableness and binding effect of every limitation, restriction, easement, reservation, condition, and covenant contained herein, whether or not any reference to Declaration is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

11.2 INSURANCE OBLIGATIONS OF OWNERS. Each Owner shall be solely responsible for insuring all of his Residence and other Improvements on his Lot, including the structural portions of such Residence, against loss or damage by fire or other casualty. Each Owner shall also be solely responsible for obtaining adequate comprehensive public liability insurance, including medical payments and malicious mischief, insuring against liability for bodily injury, death, and property damage arising from his activities on his Lot.

11.3 INTERPRETATION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a residential development, and any violation of this Declaration shall be deemed to be a nuisance. The Article and Section headings, titles, and captions have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the masculine, feminine, and neuter shall each include the other, unless the context dictates otherwise. All references herein to "days" shall, unless indicated to be contrary, refer to consecutive "calendar days."

11.4 SEVERABILITY. The provisions of this Declaration are independent and severable. Invalidation of any one (1) of the easements, covenants, conditions, or restrictions of this Declaration by a court of competent jurisdiction shall not affect the validity or enforceability of other provisions of this Declaration, which provisions shall remain in full force and effect

11.5 MORTGAGE PROTECTION. No lien created under this Declaration, nor any breach of this Declaration, nor the enforcement of any provision hereof affects, impairs, defeats or renders invalid any Recorded Mortgage or any of the terms or provisions of the lien thereof upon a Lot made in good faith and for value or the rights or remedies of the Mortgagee under any Recorded Mortgage upon a Lot made in good faith and for value. After a Mortgagee or other Person obtains title to a Lot by judicial foreclosure or by means set forth in a Mortgage, the Lot shall remain subject to the Declaration after the date the Mortgagee or other Person obtains title.

11.6 STATUTORY REFERENCES. All references in this Declaration to statutes are to those statutes as they are currently in effect or to subsequently enacted replacement statutes.

11.7 ARTICLES, SECTIONS AND EXHIBITS. The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibit A* attached to this Declaration is incorporated herein by reference .

11.8 PRIORITIES AND INCONSISTENCIES. If there is any conflict or inconsistency between this Declaration and a Supplemental Declaration, then the provisions of

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the Supplemental Declaration shall control, although such instruments shall be construed to be consistent with one another to the extent possible.

Declarant has executed this Declaration as of this 25th day of August, 2009.

MH WILCOX, LLC,
a Delaware limited liability company

By: Daniel Thompson

Print Name: Daniel Thompson

Title: Member

Declarant

STATE OF CALIFORNIA

COUNTY OF ORANGE

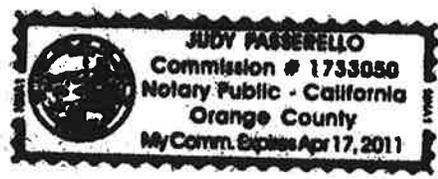
On AUGUST 25, 2009, before me, JUDY PASSERELLO, NOTARY PUBLIC
(here insert name and title of the officer)

personally appeared DANIEL THOMPSON
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Judy Passerello



(SEAL)

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated December 6, 2007, and recorded on December 14, 2007, as Instrument No. 20072747443, in the Official Records of Los Angeles County, California (the "Deed of Trust"), which Deed of Trust is by and between MH Wilcox, LLC, a Delaware limited liability company, as Trustor, and DSL Service Company, a California corporation, as Trustee, and Downey Savings and Loan Association, F.A., as Beneficiary, expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Gatsby Hollywood ("Declaration"), and to all easements to be conveyed in the Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, which shall remain in full force and effect.

Dated: August 20, 2009

US Bank National Association, as successor in interest to the Federal Deposit Insurance Corporation as receiver for Downey Savings and Loan Association, F.A.

By: James R. Michiser
Print Name: JAMES R. MICHISER
Title: Authorized Representative VICE PRESIDENT

[NOTARIAL ACKNOWLEDGMENT ON FOLLOWING PAGE]

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STATE OF CALIFORNIA
COUNTY OF San Bernardino

On Aug. 20, 2009, before me, Linda Melendez, Notary Public
(here insert name and title of the officer)

personally appeared James R. Milhiser

who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature: Linda Melendez

(SEAL)

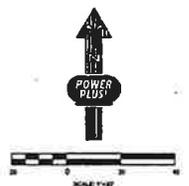
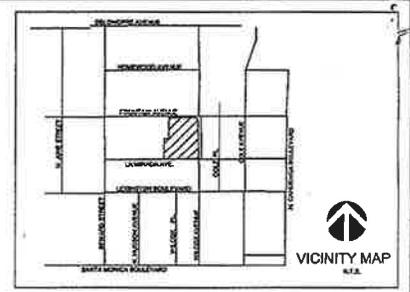
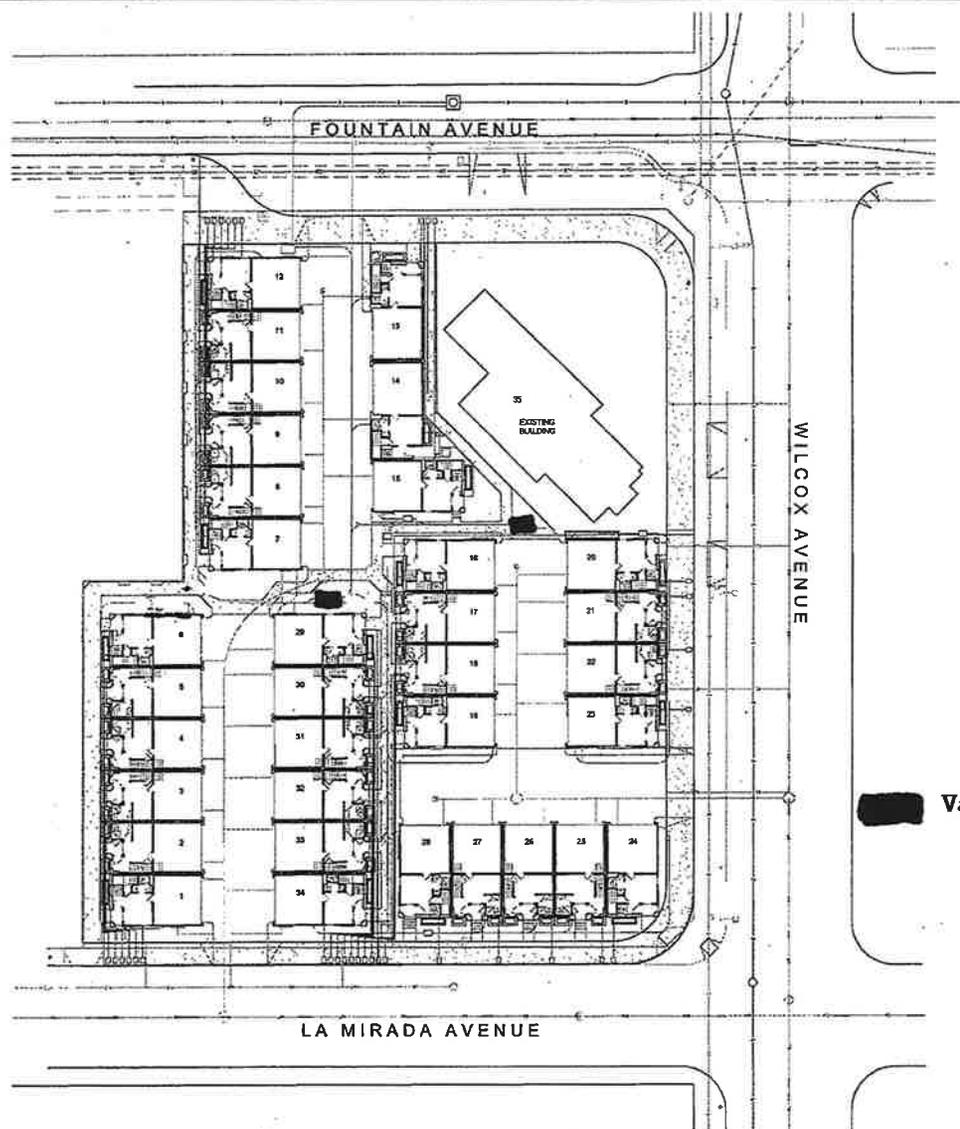
45

EXHIBIT A

APPROXIMATE LOCATIONS OF EXCLUSIVE USE AREA UTILITY VAULTS

Exhibit A

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- PROPOSED 8" UTILITY TRENCH
- EXISTING ELECTRIC
- ELECTRIC METER & TELEPHONE / CATV TERMINALS
- TRANSFORMER PAD (T-7)
- HANDHOLE (T-7)
- PROPOSED GAS
- EXISTING GAS
- GAS METER
- GAS VALVE (TO BE REMOVED)
- EXISTING TELEPHONE
- TELEPHONE HANDHOLE (TO BE RELOCATED)
- TELEPHONE BOX (TO BE RELOCATED)
- PROPOSED STREET LIGHT TRENCH
- EXISTING STREET LIGHT TRENCH
- STREET LIGHT TRENCH (TO BE REMOVED)
- STREET LIGHT
- EXISTING STREET LIGHT
- STREET LIGHT (TO BE REMOVED)
- STREET LIGHT WITH TRAFFIC SIGNAL
- STREET LIGHT WITH TRAFFIC SIGNAL (TO BE REMOVED)
- STREET LIGHT HANDHOLE
- WATER
- WATER METER
- EXISTING WATER
- EXISTING WATER VALVE
- EXISTING WATER METER
- EXISTING FUSE W/SHUNT
- FIRE HYDRANT (TO BE REMOVED)
- SEWER
- EXISTING SEWER
- SEWER HANDHOLE
- EXISTING STORM DRAIN
- PROPERTY LINE
- BOUNDARY LINE
- WALL
- EASEMENT

DESCRIPTION	DATE
ISSUED NEW WATER LATERALS AND METERS	R.L.S. 05-07-08
ADJUSTED GAS AND ELECTRIC METER LOCATIONS	D.T. 05-07-08
UPDATED BASE GAS & ELECTRIC METER LOCATIONS	P.L. 05-19-08
UPDATED BASE GAS, GAS AND ELECTRIC METER LOCATIONS	P.L. 05-20-08

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 1401 QUAIL STREET, SUITE #100
 NEWPORT BEACH, CA 92660
 TEL: (714) 565-0100 FAX: (714) 565-0700

CONFLICT EXHIBIT
 TRACT 56782
 "THE GATSBY HOLLYWOOD"
 LOS ANGELES, CALIFORNIA

305-001
 06/25/08
 11" x 30"
 1 of 1
 CHECK DATE: 06/25/08

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**REGULAR MEETING OF THE CITY OF
COSTA MESA PLANNING COMMISSION**

December 9, 2013

These meeting minutes represent an "action minute" format with a concise summary of the meeting. A video of the meeting may be viewed on the City's website at www.costamesaca.gov or purchased on DVD upon request.

Hilda Veturis, long time employee who was retiring on December 27, 2013, led in the Pledge of Allegiance.

ROLL CALL:

Present: Chair Jim Fitzpatrick
Vice-Chair Robert Dickson
Commissioner Colin McCarthy
Commissioner Jeff Mathews
Commissioner Tim Sesler

**PRESENTATION OF PLANNING COMMISSION GREEN DESIGN AWARD FOR
BEACH HOUSE IMPORTS AT 1884 PLACENTIA AVENUE**

Senior Planner Mel Lee and Chair Fitzpatrick gave an overview of the Beach House Imports' nomination for a Green Design Award and summarized the Orange County Register article that spotlighted the business.

Mr. Tim Bunning, owner of Beach House Imports, gave a narrative of the renovations made to his business. He thanked the Commission for recognizing his business through the Green Design Award.

Chair Fitzpatrick presented Mr. Bunning with the Planning Commission Green Design Award.

PUBLIC COMMENTS

Beth Refakes, East Side resident, announced that the OCTA had voted down the toll roads on the I-405 Freeway. She wished everyone a happy holiday and new year.

PLANNING COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Sesler invited all residents who rode bikes to complete the bike survey posted on the City's website and gave an update regarding the City's 311 application.

Vice-Chair Dickson spoke about being approached by two members of the public regarding West Side overlay zone compatibility issues. He thanked Weichman Realty for the Polar Express and Hilda Veturis for all her years of service. Chair Fitzpatrick suggested Vice-Chair Dickson agendize discussion of the overlay zone for January 2014.

Commissioner McCarthy wished Hilda Veturis the best in her retirement and congratulated Commissioner Mathews on his recent engagement. He reported on the OCTA Toll Road meeting and said Assemblyman Allan Mansoor would be trying to get something done in Sacramento regarding the issue.

CONSENT CALENDAR

1. Minutes for the meeting of November 25, 2013
2. Code Enforcement Update

MOTION: Approve the November 25, 2013 Minutes and Code Enforcement Update. Moved by Chair Fitzpatrick, second by Vice-Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

Chair Fitzpatrick announced that Public Hearings Nos. 6, 7 and 8 would be moved to the beginning of the Agenda as the recommendation was that they be continued.

PUBLIC HEARINGS

6. **Application No.:** PA-99-09 (Review)
Applicant: City of Costa Mesa
Site Address: 1967 & 1977 Newport Boulevard
Zone: C2
Project Planner: Mel Lee
Environmental Determination: Exempt

Description:

Review of previously approved Conditional Use Permit that allowed 40% of the rooms located at the Sandpiper Inn to be devoted to long-term occupancies.

Specifically, the Planning Commission will consider if the Sandpiper Inn has historically operated in a fashion that is consistent with the conditions of approval set forth in the approved Conditional Use Permit for the property.

PUBLIC COMMENTS

Judy Smith, West Side Costa Mesa resident, presented pictures, addressed concerns and spoke in opposition of the conditional use permit for Sandpiper Motel.

Chair Fitzpatrick asked Commissioner Sesler to follow-up with Ms. Smith's concerns.

MOTION: Continue PA-99-09 (Review) to the January 13, 2014 Planning Commission. Moved by Chair Fitzpatrick, second by Vice-Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

7. **Application No.** PA-98-73 (Review)
Applicant: City of Costa Mesa
Site Address: 2277 Harbor Boulevard
Zone: C1
Project Planner: Mel Lee

Description:

Review of previously approved Conditional Use Permit that allowed 40% of the rooms located at the Costa Mesa Motor Inn to be devoted to long-term occupancies.

Specifically, the Planning Commission will consider if the Costa Mesa Motor Inn has historically operated in a fashion that is consistent with the conditions of approval set forth in the approved Conditional Use Permit for the property.

PUBLIC COMMENTS

Judy Smith, West Side Costa Mesa resident, stated she was in opposition of the conditional use permit for the Costa Mesa Motor Inn.

MOTION: Continue PA-98-73 (Review) to the January 13, 2014 Planning Commission meeting. Moved by Chair Fitzpatrick, second by Vice-Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

8. **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING TITLE 13, ARTICLE 8, SECTION 13-172, ET. AL., OF THE COSTA MESA MUNICIPAL CODE RELATED TO MOTELS**

Code Amendment CO-13-03 related to Motels. The amendments would reduce the total number of rooms that could be utilized as extended occupancy rooms at any motel site from 25% to 10%. Environmental Determination: Exempt.

PUBLIC COMMENTS

Judy Smith, West Side Costa Mesa resident, said she would return on January 13, 2014 to speak on all motel items.

MOTION: Continue the City Council Ordinance amending Title 13, Article 8, Section 13-172, et al, to the January 13, 2014 Planning Commission meeting. Moved by Chair Fitzpatrick, second by Vice-Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

Chair Fitzpatrick advised that Public Hearing No. 10 would be taken out of order to give the Consultant the opportunity to make her presentation early in the meeting.

10. GENERAL PLAN AMENDMENT GP-13-03 IS A CITY-INITIATED AMENDMENT TO THE 2000 GENERAL PLAN CONSISTING OF:

- a) Addendum to Final Program Environmental Impact Report (EIR): To satisfy the requirements of the California Environmental Quality Act (CEQA), the City prepared an addendum to the original General Plan Final Program EIR (certified in January 2002).
- b) Proposed 2013-2021 Housing Element: A technical update of the Housing Element of the 2000 General Plan as required by California Law Government Code Section 65588.

Management Analyst Hilda Veturis gave an introductory overview. She reminded the Commission that Costa Mesa's RHNA (Regional Housing Needs Allocation) number was two (2), and they had eight (8) years to meet that RHNA number. Ms. Veturis turned the presentation over to Consultant Veronica Tam.

Consultant Veronica Tam provided a power point presentation that explained the Housing Element, the steps staff had taken and where they currently were at in the process.

PUBLIC COMMENTS

Jay Humphrey, Costa Mesa resident, wished everyone a happy Holiday season and asked if replacing affordable housing units with non-affordable house units would force RHNA's number to increase. He added there were mobile homes in the West Side that if you added an additional floor would suddenly have ocean views and would no longer be affordable housing. What would the City do to maintain affordable housing and keep RHNA's number of two if they removed affordable housing from those confines?

Ms. Tam explained the RHNA process and affordable housing preservation. Chair Fitzpatrick suggested a possible overlay or zoning plan for the Fairview Development facility as part of the Commission's 2014 Goals. Commissioner Dickson thanked the community and staff for their involvement in the ongoing process.

MOTION: That the City Council adopt the addendum to Final Program EIR and adopt the General Plan Amendment GP-13-03 for the proposed 2013-2021 Housing Element. Moved by Vice-Chair Dickson, second by Chair Fitzpatrick.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

1. **Application No.:** PA-08-12 A1
Applicant: Abid Ali Malik
Site Address: 1512 Bristol Street
Zone: C2
Project Planner: Antonio Gardea
Environmental Determination: Exempt

Description:

1. Amend conditional use permit (PA-08-12) to allow concurrent sales of beer and wine for off-site consumption (Type 20 State Alcoholic Beverage Control license) at an existing gasoline station.
2. A finding of public convenience or necessity in conjunction with the proposed ABC license.

Senior Planner Antonio Gardea summarized the staff report. The item was an alcohol beverage license for sale of beer and wine for off-site consumption. No public comments were received. The gas station was located in an area of overconcentration and the Commission would be making a finding of public convenience or necessity in order to have the license issued to this location.

The Commission discussed the difficulty of obtaining a new license, the business hours and Condition No. 9.

PUBLIC COMMENTS – None

Sherrie Olson, Consultant for Shell Gas Station and Ali Malik, owner of Shell Gas Station presented their request. Mr. Malik stated he owned two gas stations and had been a business owner in the City of Costa Mesa for the past 15 years. Ms. Olson advised they had read the conditions of approval, they were not in agreement with them and requested modifications based on the numerous findings they presented. Given Mr. Malik's good standing with the community and the dollars he had invested, Ms. Olson asked for case-by-case consideration for his request so they could move forward.

At the request of Chair Fitzpatrick, Ms. Olson explained the process for a Type 20 State Alcoholic Beverage Control license.

A lengthy discussion followed regarding oversaturation in the area and allowing new licenses on a case-by-case basis.

MOTION: Approve PA-08-12-A1 at 1512 Bristol Street, make a finding of public convenience or necessity for a Type 20 ABC license and the Conditions of Approval be modified as follows: strike Condition of Approval No. 5 and replace with the required condition for quiet enjoyment of the neighboring community; amend the hours on Condition of Approval No. 7 to state “and shall not occur between 12 midnight and 6 a.m. and, strike Condition of Approval No. 9. **NOTE:** The staff report stated this was a 24-hour business; applicant clarified their business hours were 5 a.m. to 12 midnight.

Commissioner Sesler asked about monitoring the restriction of ABC licenses.

Commissioner Dickson asked staff to provide them with full copies of ABC reports for future beer and wine license applications.

Moved by Vice-Chair Dickson, second by Commissioner Mathews.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, Mathews, Sesler
Noes: McCarthy
Absent: None
Abstained: None

The Chair explained the appeal process.

2. **Application No.:** PA-94-14 A1
Applicant: Gary Turner
Site Address: 1562 Newport Boulevard
Zone: C2
Project Planner: Antonio Gardea
Environmental Determination: Exempt

Description:

Amend conditional use permit (PA-94-14) to change an existing State Alcoholic Beverage Control License for an existing bar (Pub 33) located within 200 feet of residentially zoned property from a type 42 (On-Sale Beer and Wine) to a type 48 (On-Sale General) license.

Senior Planner Antonio Gardea summarized the staff report. He reported the application was a request to amend a conditional use permit that allowed the sale of beer and wine. The business had changed ownership and was not located in an over concentrated area. The owner would be cancelling the license rather than surrendering it to another retailer in the city if the upgraded license was obtained.

Commissioner McCarthy asked if the neighbor's concerns dimmed staff's view in anyway. Mr. Gardea stated they were not concerned because the neighbor's concerns were related to the previous owner. Since the change of ownership, the business had not received concerns regarding the operation and the police department supported the new use and change of atmosphere.

The Commission discussed the comments received by a resident who was in opposition of elevating the liquor license and expressed concerns over past Fire complaints and Code Enforcement violations regarding the smoking patio that would remain open until 2 a.m. and residences less than 200 feet away.

Mr. Gardea stated the constituent who called was concerned with the rancorous environment, noise from patrons leaving the bar and sound travel from the juke box.

PUBLIC COMMENTS

Applicants Joann and Gary Turner had reviewed the conditions of approval and were in agreement with them. Their plans were to revamp and beautify the building by investing \$250,000 to renovate the interior and exterior of the Sports Bar which used to be a bikini bar; having a full liquor license would allow them the goal of marketing to a higher demographic. They requested the support from the Commission, said they would be open to community's concerns and added they had received an overwhelming response from local residents who were thrilled with the change.

The Commission discussed the smoking patio, the possibility of a retractable cover over the smoking patio in order to minimize noise, kitchen facilities, serving food and server's attire. Ms. Turner reported there would be a cover over the smoking patio. They hoped to serve food (deli sandwiches, etc.) and change the theme and attire of the bar when they obtained a full liquor license.

There were no comments from the public.

MOTION: Based on the evidence of the record, the findings contained in Exhibit A, modified Conditions of Approval in Exhibit B as follows: Condition of Approval No. 1 to contain "continue improvements and renovations with quality materials as stated in the staff report to the satisfaction of the Development Services Director of designated staff"; add Condition of Approval No. 17 pertaining to quiet enjoyment; add Condition of Approval No. 18 to have some type of food service; add Condition of Approval No. 19 to include patio cover to the satisfaction of the Development Services Director to mitigate noise; approve PA 94-14 A1 for a change of ABC license from Type 42 to Type 48. Moved by Vice-Chair Dickson, second with comment by Commissioner McCarthy.

Commissioner McCarthy requested the condition pertaining to the quiet enjoyment of the neighbors be a standard condition.

The motion carried by the following roll call vote:

Ayes: Dickson, McCarthy, Mathews, Sesler
Noes: Fitzpatrick
Absent: None
Abstained: None

The Chair explained the appeal process.

3. **Application No.** PA-89-36 A2/ PA-87-133 A1/ ZA-13-22
Applicant: Barbara Cohen
Site Address: 901 South Coast Drive &
905 South Coast Drive
Zone: PDC
Project Planner: Antonio Gardea
**Environmental
Determination:** Exempt

Description: Amendments to the existing Planned Sign Programs PA-89-36 & PA-87-133 for the Metro Pointe office and retail center.

The amended sign program includes the following signs:

1. Two new 53-foot high pylon signs, which include a 9-foot high by 18-foot wide electronic changeable copy sign;
2. Three freestanding signs to replace existing signs (13 feet, 4 inches wide and approximately 24 feet in height);
3. Fourteen temporary banners mounted on 7 poles (2 feet, 6 inches wide by 10 feet in height each); and
4. Two project identification signs:
 - a. Replacement of the sign at the corner of Bear Street and South Coast Drive with individual letters 18-inches in height and a logo 5-feet, 2-inches in height; and
 - b. A new sign, 44 feet in width, with individual letters, 6-feet in height and a logo 12-feet in height mounted to the parking structure facing the freeway.

The sign program also includes a directional sign at the affiliated office complex across the street from the Metro Pointe retail center. The freestanding, illuminated sign is greater than 7 feet in height (approximately 12 feet in height by 6 feet, 3 inches in width) and is located within 200 feet of residentially -zoned properties.

Senior Planner Antonio Gardea summarized the staff report and provided slides of the proposed pylon signs and flag pole-type banners. Staff's recommendation was to approve the pylon, identification and directional signs and deny the banners and LED reader boards.

The Commission discussed monument signs, square footage of new pylon signs being within the original plan sign program, rational for banning LED readers and banners if they were not visible from residential areas, advertising for City events and CalTrans' limitations on reader boards.

PUBLIC COMMENTS

Milton Solomon, Principal for Architectural Design & Signs (ADS) speaking on behalf of the developer Arnel Property, stated he had read and was in agreement with the conditions of approval. Mr. Solomon spoke on how LED's revolutionized the sign industry and how essential they were to the success of the project. The 8 banners added color and presented opportunities for the seasons but were not critical. Mr. Solomon pointed out the important aspect of adding "Costa Mesa"

underneath the Metro Pointe sign so people could begin relating Metro Pointe with the City of Costa Mesa.

Beth Refakes, Costa Mesa resident, liked adding "Costa Mesa" underneath the Metro Pointe sign but felt the banners would detract and create visual clutter from the Metro Pointe signage. She did not think the LED reader boards would be an asset to Metro Pointe and asked if the existing signage in the parking structure was going to remain or be removed.

LED reader boards and projects with LED reader boards were discussed at length.

MOTION: Strike "and 14 temporary banner signs" from the second whereas paragraph on the resolution approving the application. Based on the evidence of the record, the findings contained in Exhibit A and subject to the Conditions of Approval contained in Exhibit B with the following modifications: paragraphs "m" and "n: be duplicative of "i" and "j" (strike paragraphs "m" and "n"); turn "o" into "m"; include in "n" that the advertising on the LED reader board shall include City and non-profit events (same conditions as SOCO); new condition "o" to be "as presented by the applicant add "Costa Mesa" to the project identification sign along the 405 Freeway frontage." Moved by Vice-Chair Dickson, second by Commissioner Mathews.

The motion carried by the following roll call vote:

Ayes: Dickson, Mathews, Sesler

Noes: Fitzpatrick, McCarthy

Absent: None

Abstained: None

The Chair explained the appeal process.

4. **Application No.** PA-13-30, TTM 17649
Applicant: BJ Delzer Melia Homes
Site Address: 687 Victoria Street
Zone: R2-MD
Project Planner: Minoo Ashabi
Environmental
Determination: Exempt

Description:

The proposed project involves:

- 1) Design Review to construct an 11-unit, two-story detached residential development including the following:
 - a) Variance from open space requirement (40 percent required; 34 percent proposed);
 - b) Variance from common lot requirement (no common lot proposed);
 - c) Variance from minimum lot size and average lot size requirements (3,000 SF required; 2,645 SF proposed);
 - d) Administrative Adjustment to reduce the second floor rear yard setback (20 feet required; 12.5 feet proposed);

- e) Administrative Adjustment to reduce distance between buildings (10 feet required; 7 feet proposed);
- f) Deviation from Residential Design Guidelines requested for second floor to first floor ratio (80 percent recommended; 110 percent proposed); and,
- g) Deviation from Residential Design Guidelines requested for average side yard setback for second floor (10 feet required; 8 feet proposed).

2) ***Tentative Tract Map No. 17649*** to subdivide a 0.8-acre parcel for a residential common interest development.

Principal Planner Mino Ashabi summarized the staff report. She advised that Item G (average setback for side yard) on the Design Review would no longer be applicable since the City Council had adopted an amendment to the Residential Design Guidelines at their December 3, 2013 meeting.

The Commission discussed the 5% open space shortfall and onsite trash service.

PUBLIC COMMENTS

Chad Brown, representing Melia Homes, hoped the application could replace older rental housing in the West Side with for sale single-family detached housing. Mr. Brown encouraged focus towards the general plan policy that was in place regarding the allowable density for the site and addressed parking and open space concerns. He stated the project was consistent with small lot ordinances; if the Commission approved Item No. 9 on the Agenda (small lot ordinance), the three variances (a, b and c) would go away. Mr. Brown stated that Melia Homes had reviewed the conditions of approval; they were satisfied with the conditions of approval and accepted them. Mr. Brown requested the Commission's approval for the project.

Jay Humphrey, Costa Mesa resident, addressed two concerns - inadequate parking and the three variances. He asked if approval of the small lot ordinance would impact the project.

Brian Anderson, Costa Mesa resident, said the project was affecting the area where he lived but he was in support of it. Mr. Anderson addressed parking issues and suggested having one less unit, adding visitor parking or a common area for children to play.

Barrie Fischer, Costa Mesa resident, was one of the residents who emailed her parking concerns. She felt the development was beautiful and it would improve the neighborhood but if the developer could require the tenants from the apartments along Pomona to Page School to use their apartments for parking cars instead of storage she would be in support of it. The constant in-and-out of cars, talking that was keeping her awake and jaywalking was unacceptable. The traffic from the apartments needed to be rerouted back to Victoria. Chair Fitzpatrick encouraged Ms. Fischer to send him an email so he could refer her concerns to the Neighborhood Improvement Task Force.

Chad Brown clarified the existing project had 12 units with 17 parking spaces so he understood how that would have detrimental effects from overflow parking. Their

proposal was for one less unit and 44 total parking spaces which tripled the amount of parking for a smaller project. Mr. Brown offered alternatives for additional parking (time and date specific turnabout). He addressed variance concerns and materials used for the driveways that would support the weight of trash trucks. Mr. Brown requested the Commission's approval for the development.

Commissioner McCarthy said the project was a small solution because 12 medium density apartment units were being removed and replaced with 11 detached residences that were fully parked.

Commissioner Sesler supported the development and said attractive developments that encouraged homeownership were needed in the area. Having on-site trash service was a welcomed relieve. Parking issues could be addressed via a survey.

MOTION: Based on the findings in Exhibit A and the conditions set forth in Exhibit B, with additional conditions that trash service shall occur onsite and guest parking shall be added at the discretion of the Development Services Director or designated staff in the common space by Unit 10; modify Condition of Approval No. 21 include that the garage shall be suitable for parking two automobile or truck vehicles; approve PA-13-30, TTM 17649 for an 11-unit detached common interest development. Moved by Chair Fitzpatrick, second by Commissioner McCarthy.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler

Noes: None

Absent: None

Abstained: None

The Chair explained the appeal process.

5. **Application No.:** 125 East Baker Street Apartments Environmental Impact Report (EIR)
Applicant: Red Oak Investments
Site Address: 125 East Baker Street
Zone: CL
Project Planner: Mel Lee
Environmental Determination: Environmental Impact Report (EIR)

Description:

The purpose of the hearing is to receive public comment on the Draft Environmental Impact Report (DEIR) for the 125 East Baker Street Apartment project. The proposed project consists of a five-story, 240-unit residential apartment building (63 feet overall height) that wraps around a six-level parking structure (57 feet overall height) with 465 parking spaces in the structure and four outdoor on-grade parking spaces. The proposed project will involve a General Plan Amendment to change the land use designation from Industrial Park (MP) to High Density Residential (HDR) and a Zoning Change from Commercial Limited (CL) to Planned Development Residential – High Density (PDR-HD). Other

entitlements include a Zoning Code amendment and Master Plan to accommodate the proposed project

Senior Planner Mel Lee advised the purpose for the public hearing was to take public comment on the Draft Environmental Impact Report that had been available for public comment for the 45-day period as stipulated in the California Environmental Quality Act (CEQA). Mr. Lee reported the Commission would not be taking final action on the project. The public comment period would remain open until December 20, 2013 at which time the environmental consultant would bring forward the final document along with all of the entitlements to the Planning Commission and City Council for separately advertised public hearing dates at future date yet to be determined. Mr. Lee introduced Julian Capita from Atkins who was the Environmental Consultant who prepared the draft Environmental Impact Report and added that Red Oak Investments, the project developer was also present if the Commission had any questions regarding the project.

Julian Capita provided a background overview of the draft EIR.

PUBLIC COMMENTS

Jay Humphrey, Costa Mesa resident, was in support of the project.

Gary Lucas, AZ Manufacturing, spoke in opposition of the Draft EIR.

Max Mashar, Baker Street tenant asked what type of noticing would be given if the project moved forward.

Anne Lukas, co-owner of AZ Manufacturing, did not understand the EIR and did not see measures being taken regarding traffic issues the project would create.

Mike Harrison, representing Trico Realty, was an opponent of residential development infiltrated in industrial areas but felt this project was an appropriate land use and well-conceived project.

Chair Fitzpatrick asked for a timeline. Mr. Lee advised the public comment period would end on December 20, 2013 and reported that copies of the Draft EIR were available in hard copy or electronically. At the conclusion of the public comment period, all comments would be prepared and incorporated into the Final EIR and made available 10 days prior to the public hearing date. With regards to the public hearing for the project all residents within a 500 foot radius would receive notification.

Commissioner Dickson requested the comments from the public be fully transcribed in lieu one sentence summations. (Verbatim Minutes were typed under a separate cover).

9. **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE RELATED TO SMALL LOT SUBDIVISIONS**

Code Amendment CO-13-04 to amend the Zoning Code for new regulations related to small lot subdivisions. Amendments are proposed, but not limited to,

the following Code Sections in Title 13 (Zoning Code) of the Costa Mesa Municipal Code:

- Chapter I – Add new definitions related to small lot subdivisions;
- Chapter IV, Table 13-30 (Land Use Matrix) – Allowing small lot subdivisions of up to 15 dwelling units in multiple family residential zones; and,
- Chapter V, Article 2.5 – add new development standards for small lot subdivisions.

Environmental Determination: Exempt

Principal Planner Mino Ashabi advised the Commission that an ordinance for their consideration was before them as a result of an increase proposals for detached homes in the housing development. Ms. Ashabi summarized the staff report and made her presentation.

Ms. Ashabi answered questions regarding parking/density impacts; the process for future proposals if the Commission adopted the ordinance, inclusion of trash service, rear setbacks for abutting properties.

PUBLIC COMMENTS

Victor Cao, Manager of Government Affairs for the Building Industry Association (BIA), commended staff for their work throughout the year to get the small lot ordinance where it was today. Mr. Cao urged the Commission to think ahead and plan in a greater context because with home prices increasing 21%, the American Dream of homeownership was diminishing. The small lot ordinance would meet a market demand that until now had not been met. To assist with the concerns from the staff analysis, Mr. Cao submitted two proprietary BIA handouts.

Vice-Chair Dickson was concerned with preserving the characteristics of some neighborhood and suggested making the ordinance flexible so as not to lessen the standards in a detrimental way. He felt the small lot ordinance was a phenomenal effort.

Commissioner McCarthy felt the West Side of Costa Mesa was a good catalyst for the small lot ordinance.

Chair Fitzpatrick asked if the Commissioners were comfortable with going with the second recommendation and continuing the matter to the January 13, 2014 Planning Commission meeting. Vice-Chair Dickson suggested agendizing the matter early in the agenda.

Ms. Mino asked if the Commission would be interested in seeing the standard conditions at the January meeting. The Commission responded affirmatively.

MOTION: Continue Public Hearing No. 9 (AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE RELATED TO SMALL LOT SUBDIVISIONS) to the January 27, 2014 Planning Commission meeting. Moved by Vice-Chair Dickson, second by Commissioner Mathews.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler

Noes: None

Absent: None

Abstained: None

STAFF COMMENTS - None

ADJOURNMENT: NEXT PLANNING COMMISSION MEETING AT 6:00 P.M. ON MONDAY, JANUARY 13, 2014.

Submitted by:



CLAIRE FLYNN, SECRETARY
COSTA MESA PLANNING COMMISSION



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: JANUARY 27, 2014

ITEM NUMBER **PH-2**

SUBJECT: CODE AMENDMENT CO-13-04 – SMALL LOT SUBDIVISION ORDINANCE

DATE: JANUARY 16, 2014

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MINOO ASHABI, PRINCIPAL PLANNER

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, AIA (714) 754-5610
minoo.ashabi@costamesaca.gov

DESCRIPTION

Code Amendment CO-13-04 is a zoning code amendment to add new regulations for small lot subdivisions in multiple family residential zones which involves amending Title 13, the Zoning Code as follows:

- Chapter I – Add new definitions related to small lot subdivisions;
- Chapter IV, Table 13-30 (Land Use Matrix) – Allowing small lot subdivisions of up to 15 dwelling units in multiple family residential zones;
- Chapter V, Article 2.5 – add new development standards for small lot subdivisions.

It should be noted that the proposed standards will **NOT**:

- Increase the density in any of the multiple family residential zones;
- Decrease required number of parking spaces; or
- Change the entitlement process for small subdivisions

RECOMMENDATION

- Recommend that the City Council approve the ordinance and give first reading; and,
- Review and comment on the draft standard conditions of approval.

BACKGROUND

On September 10, 2013, a study session was held with the City Council and Planning Commission that was attended by the public and homebuilders. Staff was directed to prepare a "Small Lot Subdivision" ordinance with photos of potential development for consideration by Planning Commission.

On December 9, 2013, Planning Commission reviewed the first draft of the ordinance, discussed the following issues, and continued the item to January 27, 2014 meeting:

- **Perimeter side and rear setback** – Vice Chair Dickson recommended that the rear and side setbacks include provisions similar to the City of Los Angeles ordinance that notes, pre-existing development should guide the setbacks and new development should preserve the existing character of the neighborhood. A minimum side and rear setback of 10 feet was suggested. This setback would be applied to the perimeter of the development lot and not individual parcels within the development.

Response – staff revised Table 13-42 of the ordinance to include a minimum 10-foot side and rear setback for two-story and three-story development. New language was added related to the compatibility with the neighboring properties.

- **Design Guidelines** – Chair Fitzpatrick recommended including design guidelines with the ordinance similar to the City of Los Angeles ordinance. The merits of preparing a guideline was discussed and staff noted that the City of Los Angeles ordinance allows development that meet the guidelines without a discretionary review, whereas in Costa Mesa all development of two or more units within R2-MD zoning district is subject to approval of a design review by the Planning Commission. In addition, staff works with the developers to recommend the most practical site and architectural plans to the Planning Commission for review and approval. In any case, the Planning Commission has the final approval authority in terms of site planning and architectural design.

Response – Given that the City has Residential Guidelines in place, staff did not prepare a separate design guidelines for the small lot subdivision ordinance. The City of Los Angeles ordinance is applicable to all small lot subdivisions regardless of the number of units versus Costa Mesa's ordinance that would apply only to subdivisions of up to 15 units. The practical written provisions of the Los Angeles ordinance were included in the draft ordinance. In addition, all residential developments are subject to the City's Residential Design Guidelines that includes appropriate site planning and architectural articulation.

- **Recommendation to City Council** – Commissioner McCarthy noted that the report to the City Council should be a comprehensive report and include all information so that provisions of the proposed ordinance are clearly communicated. The ordinance is intended to encourage development of detached small lot single family units for ownership. The City of Costa Mesa is a good candidate for this type of development, which promotes homeownership and provides affordable options to younger families and individuals.

Response – staff included a side by side comparison of the new requirements with the existing provisions. It should be noted that the ordinance will not allow a higher density or lower parking standards.

- **Standard Conditions of Approval** – Planning Commission requested that standard conditions of approval be prepared and adopted with the ordinance to address all issues including provisions for trash pick up and storage.

Response – staff included a list of standard conditions of approval for the Commission’s review and comment. Staff recommends that these conditions be applied as part of our administrative process so that changes if necessary to address unique site specific circumstances will not require prior Council approval.

A full discussion of the background information was included in the December 9th staff report available at the following link:

<http://www.costamesaca.gov/ftp/planningcommission/agenda/2013/2013-12-09/PH-9.pdf>

Current Requirements - Common Interest Development

The City currently has regulations in place for residential subdivisions referred to as “common interest development standards.” Common Interest Developments are permitted in all multi-family residential zoning districts. The standards include various provisions such as requirement of a common lot (typically a landscape street setback and common drive), minimum lot size and average lot size standards, as well as regulations related to formation of a homeowners association. The current requirements are applicable to both detached and attached products. While these standards have been practical for larger developments; they have been challenging for smaller subdivisions. Most small subdivisions require approval of several variance and administrative adjustments to allow development of detached units on small lots. The following is a list of development standards and required documents that are proposed to be revised with the proposed Small Lot Subdivision Ordinance:

- *Common lot requirement* - The current common interest development standards require that all projects be designed with a minimum of one common lot, in common ownership and maintained by a homeowners association. This lot is required to contain common driveways, parking areas, and the front 10 feet of the landscaped street setback.
- *Minimum distance between buildings* - A 10-foot minimum between main buildings and a 6-foot minimum separation between main buildings and accessory structures is required.
- *Minimum open space* - All subdivisions are required to provide a minimum 40% of total lot area as open space. Open space excludes driveways and common hardscape areas. In addition, each individual lot is required to provide a minimum of 400 square-foot open space area with no dimension less than 15 feet.
- *Minimum Lot size* – The minimum lot size is 3,000 square feet with an overall average of 3,500 square feet. The required common lot is not included in the calculation of lot area.

- *Rear yard setback* – A 20- foot minimum rear setback is required for the second floor of two-story structures in medium density and a minimum 15- foot for high density zones.

Parking regulations are proposed to be revised; however, the required number of parking spaces will not be decreased. Subdivisions of five or more units are required to provide some open parking spaces accessible to all residents in the community and not in front of the garages.

In addition, the Common Interest Development Standards include specific provisions with respect to maintenance requirements and homeowners associations are proposed to be revised. All subdivisions are required to record CC&Rs that would include a plan for permanent care and maintenance of open spaces, recreational areas, and common facilities pursuant to State law (Civil Code 1350-1359).

ANALYSIS

The purpose and intent of the small lot ordinance is to promote affordable ownership housing by providing more flexible development standards and maintenance mechanisms for underutilized multi-family residential lots within the densities allowed by the General Plan. This proposed code amendment will add a new section to the zoning code applicable to detached residential development of up to 15 units without modifying the current “Common Interest Development” standards. The amendment is not intended to increase the current densities or decrease the parking standards.

Proposed New Development Standards - Small Lot Subdivisions

The following includes a comparison of the existing and proposed development standards applicable to subdivisions of up to 15 dwellings. The development standards are proposed to allow the most flexibility in development standards and maintenance requirements without any increase in the density requirements or decrease in the parking standards:

Common Interest Development Subdivisions of 16 or more units (Existing – No Change)	Small Lot Subdivisions Subdivisions of up to 15 units (New)
Common lot required – typically includes the main drive and street landscape setback	Common lot not required – common areas are divided among the individual parcels and reciprocal access and parking is provided by an easement recorded with the parcel/tract map
Minimum open space (development lot) – 40% (not including porches of over 6 feet in depth and balconies)	Minimum open space (development lot) – 30%* (includes porches, covered patios, roof decks and balconies)
Minimum open space (individual lot) - 400 square feet with no dimension less than 15 feet.	Minimum open space (individual lot) - 250 square feet with no dimension less than 12 feet. **
Minimum rear yard setback – 10 feet for one story and 20 feet for two stories	Minimum rear yard setback – all setbacks are treated as side setbacks with a minimum 10- foot separation from the property line.
Minimum lot size of 3,000 square feet and average lot size of 3,500 square feet; no minimum lot width	No minimum standards for lot area Minimum lot width – 20 feet
Maximum height – two-stories or 27 feet maximum unless otherwise allowed by a	Maximum height – two-stories or 27 feet maximum unless otherwise allowed by a specific plan or urban

specific plan or urban plan	plans.
Minimum distance between buildings – 10 feet	No minimum distance required as long as the structures are completely separated, do not share a common wall, and meet Building and Fire Code standards.
Homeowner's association required	City will require that the homeowners be responsible for maintenance of all areas subject to access and/or maintenance easements (i.e., access, drainage and utilities, and landscape setbacks) and carry insurance policies for the homeowners. A maintenance agreement can be executed for subdivision of 4 or less in lieu of requiring an association when each unit has an independent access to the public street and there is no common drive or other amenities.
Covenants, Conditions, and Restrictions (CC&Rs) – required to be recorded prior to final inspection	Covenants, Conditions, and Restrictions (CC&Rs) – required to be recorded prior to final inspection

* Decorative paving will be required for all interior roadways and parking to balance the reduction in open space.

** The private open space area is included in the overall open space calculations.

It should be noted that the threshold for the maximum number of parcels (15 parcels under small lot subdivision) was proposed based on a typical lot size in R2-MD zone and a manageable development without a homeowners association; this is an arbitrary number and can be modified as Planning Commission may deem appropriate.

Homeowners and Maintenance Associations

With the cost of homeownership rising, developers are proposing an alternative mechanism for maintenance of small lot subdivisions that will reduce the monthly cost to the homeowners and reduce the administrative requirements of a subdivision. While a condominium association may be the best alternative for most subdivisions, to provide compliance with the requirements of Davis-Stirling Act (i.e., 10-year homebuilder warranty and lien rights); in cases where there is no common area and where permissible under state law, a maintenance association could be a less costly alternative. In either alternative the City would require recordation of CC&Rs to ensure a certain level of maintenance standards and enforcement procedures.

The following is a comparison of the two alternative types with respect to maintenance and regulatory standards:

Applicable Regulations	Common Interest Development HOA	Small Lot Subdivision
Davis Stirling Act requirement for HOA to manage	Yes	No. Common interest developments could be exempt but determination of applicability is left to Developer. City will establish minimum maintenance standards for small lot subdivisions that association must be responsible to maintain.
Business & Professions Code	Yes	No, if less than 5 units. However

Public Reporting Requirements (public documents)		determination of applicability is left to Developer.
CC&Rs	Yes	Yes
Lien Rights	Yes	No
Common areas Reciprocal Easements, etc.	Yes	Yes/No
Budget	Required by BRE	Advisable but not required
Standard of Maintenance	Required by BRE	Advisable but not require
Conditions of Approval	Yes	Yes
Dispute Resolution	Maybe subject to arbitration	Maybe subject to arbitration
Construction Defects	Subject to Davis Stirling – builder is liable for 10 years	Unknown - subject to litigation*

* Homeowner and maintenance associations have the right to sue others as one entity; however, individual homeowners not part of a HOA or maintenance association would have to sue as individuals.

Common interest developments with a common lot are required to submit public reports to BRE and provide certain disclosures to the homebuyers under the Business & Professions Code. Small lot subdivisions under 5 parcels may avoid these requirements. However, staff is recommending establishing a minimum standard of disclosure by the developers prior to entering into sales agreement with the potential homebuyers for the sale of properties within a small lot subdivision, even if the developer is exempted from disclosure requirements under state law. These requirements are noted below and included in the draft ordinance under Section 13-42.2 (c).

- The type, thickness, and R-value of the insulation that has been installed in the home
- Any potential hazards or lead-based paint (24 CFR Part 35 and 40 CFR Part 745)
- Uses other than residential and any unusual zoning in proximity to the project
- Distance to airport if within two miles
- Any special costs that will be incurred by the lot buyer as a result of the installation of a building foundation or any other construction due to unusual soil/geological conditions
- If there is fill in excess of 2 feet
- Schools servicing subdivision and any special conditions
- Any unusual flooding conditions
- Conditions of approval by the City and any resale restrictions
- Dedications and easements
- Project phasing plan
- CC&Rs

GENERAL PLAN CONFORMITY

The proposed ordinance is consistent with the following goals and policies of the General Plan:

- LU -1 A.1, LU -1A.4, LU -10.4, HOU -1.9, HOU -2.4, HOU -4.4, CD -7A.1 and CD -7A.2.

PUBLIC NOTICE

Code requires publication of a display AD in the local newspaper (Daily Pilot) for Title 13 Code Amendments. At the time of publication of this report, no public comments have been

received. Any correspondence will be forwarded to the Planning Commission under separate cover. In addition to the newspaper ad, all property owners within PDI zoning, homeowners associations and other neighboring cities and government agencies were notified by mail.

ENVIRONMENTAL DETERMINATION

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

LEGAL REVIEW

The staff report and the draft ordinance has been reviewed and approved by the City Attorney.

CONCLUSION

Given the request from local developers and the City's desire to stimulate for sale housing development in the City, staff believes there is support for the creation of innovative programs to increase housing development and home ownership opportunities within the allowed densities of the City's General Plan. The following summarizes key aspects of the proposed ordinance.

- If adopted this will be the first of such ordinance in the County. Similar ordinances, in other jurisdictions, have not been implemented long enough to determine all the potential benefits and consequences;
- A few jurisdictions have adopted design guidelines related to site and building design including City of Los Angeles; however, in Costa Mesa, these subdivisions will be subject to discretionary process (Design review) which allows site planning and architectural review of the projects. Design guidelines are a helpful tool; however, may not be necessary. In all cases, residential developments are subject to the City's Residential Design Guidelines.
- Small lot ordinance would be applicable to all multi-family residential zoning districts and urban plan residential development and live/work projects.
- While all small lot subdivision would be subject to CC&Rs, small subdivisions of up to four parcels with no common areas could be exempt from a homeowner's or maintenance association and subject to only a maintenance agreement.
- Small lot subdivision will allow development within the allowed densities of the zoning code and general plan.


MINOO ASHABI, AIA
Principal Planner


GARY ARMSTRONG, AICP
Economic and Development Services
Director/ Deputy CEO

- Attachments:
1. Draft Ordinance
 2. List of other California Cities with adopted small lot ordinance
 3. Draft Standard Conditions
 4. Examples of Recent Projects
 5. Public Comments

Distribution:

- Director of Economic & Development Services/Deputy CEO
- Senior Deputy City Attorney
- Public Services Director
- City Engineer
- Transportation Services Manager
- Fire Protection Analyst
- Staff (6)
- File (2)

ORDINANCE NO. 14-

AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-13-04 AMENDING TITLE 13, CHAPTERS I, IV, AND V RELATED TO DEFINITIONS, LAND USE MATRIX AND NEW ARTICLE 13-42

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: FINDINGS.

City of Costa Mesa recognizes that homeownership is an important aspect of community building. The City of Costa Mesa is promoting homeownership by providing the opportunity for development of a variety of housing types at various price ranges. The small lot ordinance will allow development of detached or townhome style residential units on individual parcels instead of condominium ownership.

SECTION 2: Title 13 of the Costa Mesa Municipal Code is hereby amended as follows:

A. Section 13-6 "Definitions" of Article 2 "Definitions" of Chapter I "General" is hereby amended to insert the following definition:

Small Lot Subdivision. A residential development containing a maximum of 15 detached or townhome style units with no common walls where each unit is independently constructed on an individual parcel and the land is subdivided into fee simple parcels containing each unit. Each individual lot is provided with either a direct access to public street/ alley or an easement access through a recorded subdivision map.

B. Chapter IV; Table 13-30, Citywide Land Use Matrix is hereby amended as follows:

Add Small Lot Subdivisions as Land Use No. 2.2 to Table 13-30 as permitted use in multi-family residential zones.

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX																					
LAND USES	ZONES																				
	R1	R2 M D	R2 HD	R3	A P	CL	C 1	C 2	C 1 S ¹	T C ¹	M G	M P	P D R L D ¹	P D R M D ¹	P D R H D ¹	P D R N C M ¹	P D C ¹	P D I ¹	I & R ¹	I & R ¹ S ¹	P
RESIDENTIAL USES																					
1. Single-family dwellings (single housekeeping units)	P ¹	P	P	P	•	•	•	•	•	•	•	P	P	P	P	P	P	P	•	•	•
2. Multi-family dwellings	•	P	P	P	•	•	•	•	P	•	•	P	P	P	P	P	P	P	•	•	•
2.1 Common interest developments, residential	•	P	P	P	•	•	•	•	P	•	•	P	P	P	P	P	P	P	•	•	•
2.2 Small lot subdivisions, residential	•	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
3. Mobile home parks	•	C	C	C	•	•	•	•	•	•	•	C	C	C	C	C	C	C	•	•	•

- C. Article 2.5. "Residential Small Lot Subdivision" of Chapter V "Development Standards" is hereby created to read as follows:

ARTICLE 2.5 RESIDENTIAL SMALL LOT SUBDIVISIONS

SECTION 13-42.1 PURPOSE

The purpose of this article is to regulate development and subdivision of small lots within residential zoning districts and overlay districts where residential and live/work projects are permitted. The ownership and occupancy of these developments shall be subject to applicable laws for the general health, safety and welfare of the public. This type of subdivision is intended to provide flexible development standards and to promote a wider range of homeownership of individual lots in multiple-family residential and overlay zoning districts.

SECTION 13-42.2 PLANNING APPLICATION REQUIRED

- a) Small lot subdivisions are permitted in appropriate residential or urban plan overlay districts, subject to approval of the following planning application as may be applicable. This requirement is in addition to other permits or certificated required by law.
- 1) All new small lot development projects shall be processed according to the design review procedures contained in Section 13-29.
 - 2) All small lot development projects require approval of a tentative tract or parcel map as required by law. A tentative tract map or parcel map shall not be required until a design review has been approved; however, the map may be processed concurrently.
- b) No person shall construct, sell, lease, convey, maintain or use a lot in a small lot subdivision project within the City without first complying with the provisions of this article.

SECTION 13-42.3 DEVELOPMENT STANDARDS AND REQUIREMENTS:

- a) **Applicability.** The provisions of this section shall apply to all new residential small lot subdivisions of 15 lots or less in multi-family zones and overlay zones where residential and live/work development are permitted.
- b) **Development standards.** Table 13-42 identifies the development standards for small lot subdivision developments. See also ARTICLE 9 GENERAL SITE IMPROVEMENT STANDARDS of this chapter for additional requirements. Projects shall comply with all applicable standard plans and specifications and adopted City and State codes, as well as the following provisions:
1. The location and orientation of all buildings shall be designed and arranged to preserve natural features by minimizing the disturbance to the natural environment. Natural features such as trees, groves, waterways, scenic points, historic spots or landmarks, bluffs or slopes shall be delineated on the site plan and considered when planning the location and orientation of buildings, open

spaces, underground services, walks, paved areas, playgrounds, parking areas and finished grade elevations.

2. The site design must consider both the design elements to each unit and how these designs will enhance the overall neighborhood character and vitality of the street and sidewalk. Building setbacks and site planning must relate to surrounding built form, respecting the overall neighborhood character and existing topography. Additionally, each unit must exhibit a high level of design quality with well articulated entries and facades, proportionate windows, quality building materials and contextual landscaping.
3. All structures proposed to be constructed within a project shall conform to the following requirements:
 - a. Each unit shall be provided with direct pedestrian and vehicular access to a public street, or an alley or a common drive connecting to a public street/ alley.
 - b. Structures having dwelling units attached side by side shall be composed of no more than 4 dwelling units.
 - c. Structures having dwelling units attached side by side shall include a break in the facade by having an offset in the front building line.
 - d. Structure shall be constructed to minimize impact of the proposed development on the light, air and privacy of adjacent properties.
4. On-site lighting shall be provided in all parking areas, vehicular access ways, and along major walkways. The lighting shall be directed onto driveways and walkways within the project and away from dwelling units and adjacent properties, and shall be of a type approved by the Development Services Department.
5. The development shall comply with the provisions of CHAPTER XI. SUBDIVISIONS, which may include, but are not limited to, land dedication and improvements, such as drainage improvements and payment of fees.
6. Outside uncovered and unenclosed storage of boats, trailers, recreational vehicles and other similar vehicles shall be prohibited unless specifically designated areas for the exclusive storage of such vehicles are set aside on the final master plan and provided for in the covenants, conditions, and restrictions. Where such areas are provided, they shall be enclosed and screened from view on a horizontal plane from adjacent areas by a combination of 6-foot high opaque fences and permanently maintained landscaping.

**TABLE 13-42
SMALL LOT SUBDIVISION STANDARDS**

STANDARDS	SINGLE-FAMILY UNITS (located on individual dwelling unit lots and excluding townhouses)
Maximum Number of Stories & Building Height	2 stories/ 27 feet, except as allowed in the Westside Overlay Districts. Note: Lofts, as defined in section 13-6, without exterior access and having only clerestory windows will not be regarded as a story. See also Attic discussion below.
Attics	Attics shall not be heated or cooled, nor contain any electrical outlets or operable windows. In zoning districts where the maximum number of stories is two stories, attics above second stories shall be an integral part of the second story roofline and not appear as a 3 rd story on any building elevation. Windows in any attic space above the second story shall be incidental and limited to a dormer style.
Maximum Density (based on gross acreage)	Same as underlying zoning district or as specified in an applicable specific plan.
Minimum Open Space	30% of total lot area. No asphalt shall be permitted for paved areas. Parking and driveways shall consist of decorative concrete, pavers or other materials as deemed appropriate by the Development Services Director.
Minimum Open Space (individual unit)	250 square feet with no dimension less than 12 feet.
Development Lot	Separately owned private property interests or any portion thereof, necessary or desirable for common use, are subject to recordation of an easement for reciprocal access and maintenance. All areas of a development with 5 or more parcels, subject to a reciprocal access and/or maintenance easement shall be maintained by an association that may be incorporated or unincorporated. The association may be referred to as a maintenance association.
Parking	<ul style="list-style-type: none"> • Three bedroom or more units (including a den or home office) – two garage spaces and two open parking spaces • Two bedrooms or less units (including a den) – one garage space and two open parking • Tandem garage and parking (two spaces max.) are permitted for each individual unit with a maximum of 50% of the overall units with tandem parking. • No tandem parking is permitted for open or guest parking spaces. • For developments with 5 or more units (up to 10 units) where open/guest parking spaces are provided in driveways in front of garages for exclusive use of that unit, one additional on-site guest parking shall be provided. Two additional open guest-parking shall be provided for developments with more than 10 units.
Distance between buildings	No minimum distance required subject to compliance with Building and Fire Code standards.
Driveway width	10-foot minimum, except 16-foot minimum driveway is required if the driveway serves tenants and/or guest parking for more than one dwelling unit.
Driveway length	Straight-in driveways to garages shall have a minimum length of 19-feet from the ultimate right-of-way of any street or drive aisle use to access the lot, if parking is provided. No driveways shall be more than 5 feet in length if parking is not provided in front of garage.
Mechanical equipment, excluding antennas and flush-mounted solar panels on roofs	Roof-top location is prohibited unless completely screened from public rights-of-way and adjacent properties.
Front Development Lot:	20 feet
Side and rear (interior)	10 feet for two-stories and three-story development
Side (street side, if applicable) Development Lot:	10 feet Note: Driveways providing straight-in access from a public street to a garage shall be at least 19 feet long, as measured from the property line.

**TABLE 13-42
SMALL LOT SUBDIVISION STANDARDS**

STANDARDS	SINGLE-FAMILY UNITS (located on individual dwelling unit lots and excluding townhouses)
Rear Abutting a Publicly Dedicated Alley	5 feet; however, garages may be required to set back further to ensure adequate back up distance. Rear Yard Coverage does not apply.
Bluff Top Setback	No building or structure closer than 10 feet from bluff crest (see Section 13-34 BLUFF-TOP DEVELOPMENT).
Roof or Eaves Overhang; Awning	2 feet 6 inches into required side setback or building separation area. 5 feet into required front or rear setback.
Open, unenclosed stairways.	Not permitted
Chimneys	May extend 2 feet above maximum building height.
Automatic roll-up garage doors	Yes
Location of Open Parking	Guest parking shall be located within a reasonable distance of the unit it serves. Detached garages that are not located within a reasonable distance to the units they are intended to serve are prohibited.
Trash Storage	All units shall be provided with a small alcove inside or outside the unit to allow storage of at least two trash carts without encroaching into the garage space. All efforts shall be made to provide on-site trash service. Trash carts shall be stored on-site for trash pick up to the greatest extent possible.
Above-Ground Pools and Spas	Prohibited in front yards and subject to 5-foot side and rear setback from the main structures.
LANDSCAPING	
A detailed landscape plan prepared pursuant to CHAPTER VII LANDSCAPING STANDARDS shall be approved by the Planning Division prior to issuance of any building permits.	
SIGNS (See Chapter VIII).	
FENCES AND WALLS	
Fences and walls placed between the property line and required setback line for main buildings shall conform to the City's walls, fences, and landscaping standards. See ARTICLE 9 GENERAL SITE IMPROVEMENT STANDARDS of this chapter for further information.	

(c) Documents required.

- (1) Project approval is subject to submission of complete organizational documents setting forth a plan or manner of permanent care and maintenance of any open spaces, recreational areas and commonly used areas/facilities. No such documents shall be acceptable until approved by the City Attorney as to legal form and effect, and by the Planning Division as to suitability for the proposed use of the open areas.
- (2) Prior to entering into a sales agreement for any property within a small lot subdivision, the developer shall disclose general information regarding the property to the future homebuyers, including but not limited to the following:
 - a. The type, thickness, and R-value of the insulation that has been installed in the home
 - b. Any exposed hazards during and after construction (Lead-based paint, asbestos, etc.)
 - c. Uses other than residential in proximity to the project

- d. Unusual adjacent zoning
 - e. Distance to airport if within two miles
 - f. Where soils, filled ground and geologic information is available
 - g. Any special costs that will be incurred by the lot buyer as a result of the installation of a building foundation or any other construction due to unusual soil/geological conditions
 - h. If there is fill in excess of 2 feet
 - i. Schools servicing subdivision and any special conditions.
 - j. Any unusual flooding conditions
 - k. Conditions of approval by the City and any resale restrictions
 - l. Dedications and easements
 - m. Project phasing plan
 - n. CC&Rs
- (3) All small lot subdivisions shall file a declaration of covenants to be submitted with the application for approval. The declaration of covenants shall include, but not be limited to, the following provisions.
- a. The homeowners' association or a maintenance association (as applicable) shall be established prior to the sale of any unit(s).
 - b. Membership in the homeowners or maintenance association shall be mandatory for each owner and any successive owner.
 - c. Provisions to restrict parking upon other than approved and developed parking spaces and to require that garages be kept available for tenant parking shall be written into the covenants, conditions and restrictions for each project.
 - d. If the development is constructed in increments or phases which require one or more final maps, reciprocal covenants, conditions, and restrictions and reciprocal management and maintenance agreements shall be established which will cause a merging of increments as they are completed, and embody one homeowners' association with common areas for the total development.
 - e. The declaration of covenants shall contain language or provisions substantially as follows:
 - i. "The covenants, conditions and restrictions of this declaration shall run to the City of Costa Mesa insofar as they shall apply to the maintenance of the "common areas" as herein defined."
 - ii. "In the event the association or other legally responsible person(s) fail to maintain the common area in such manner as to cause same to constitute a public nuisance, the City may, upon proper notice and hearing, institute summary abatement procedures and impose a lien for the costs of such abatement upon the common area, individual units or the whole thereof as provided by law."

SECTION 2: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this ordinance amending the zoning code will have a significant effect on the environment..

SECTION 3: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 4: SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5: PUBLICATION. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____ 2014.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

Survey of Other Jurisdictions

In addition to city of Los Angeles, a number of northern and central California jurisdictions (see below) have adopted a small lot subdivision ordinance.

Local Jurisdiction	Summary of Small Lot Subdivision Program
Los Angeles, CA	<ul style="list-style-type: none"> • Allowed in multi-family and commercially zoned properties. • Minimum lot area, 600 sq. ft. and minimum lot width, 12 feet • 80 percent lot coverage • Design Guidelines address site planning, building design, and materials. • No discretionary review required
Marysville, CA	<ul style="list-style-type: none"> • Allows minimum lot size of 3,000 sq. ft. in designated areas.
Merced, CA	<ul style="list-style-type: none"> • Allowed in Planned Development zones. • Minimum lot area 1,950 sq. ft. and 3,000 sq. ft. • Two sets of design guidelines based on lot width and area. • Sixty percent lot coverage
Modesto, CA	<ul style="list-style-type: none"> • Allowed in specific plan areas and planned development zones • Design guidelines for lot areas of 5,000, 3,000 and less than 3,000 sq. ft. • Requires discretionary review
Napa, CA	<ul style="list-style-type: none"> • Permitted in single family residential zones that allow single family and duplex • No minimum lot area and width requirement • Subject to approval of a conditional use permit
Oakland, CA	<ul style="list-style-type: none"> • Minimum lot area of 4,000 sq. ft. and minimum lot width of 25 feet • Subject to approval of a conditional use permit
Santa Rosa, CA	<ul style="list-style-type: none"> • Allowed in single-family and multi-family zones. • Minimum lot area of 2,000 sq. ft. and density of 18 du/acre • Subject to approval of a conditional use permit

DRAFT STANDARD CONDITIONS OF APPROVAL

1. The expiration of Planning Application PA-XX shall coincide with the expiration of the approval of the Tentative Tract Map No. XX which is valid for two years. An extension request is needed to extend the expiration for each additional year after the initial 2-year period.
2. The conditions of approval for PA-12-XX shall be blueprinted on the face of the site plan as part of the plan check submittal package.
3. Address assignment shall be requested from the Planning Division prior to submittal of working drawings for plan check. The approved address of individual units, buildings, etc, shall be blueprinted on the site plan and on all floor plans in the working drawings.
4. No modification(s) of the approved building elevations including, but not limited to, change of architectural type, changes that increase the building height, removal of building articulation, or a change of the finish material(s), shall be made during construction without prior Planning Division written approval. Failure to obtain prior Planning Division approval of the modification could result in the requirement of the applicant to (re)process the modification through a discretionary review process or a variance, or be required to modify the construction to reflect the approved plans.
5. Two (2) sets of detailed landscape and irrigation plans, consistent with the preliminary plans, which meet the requirements set forth in Costa Mesa Municipal Code Sections 13-101 through 13-108, shall be required as part of the project plan check review and approval process. Plans shall be forwarded to the Planning Division for final approval prior to issuance of building permits.
6. Landscaping and irrigation shall be installed in accordance with the approved plans prior to final inspection or occupancy clearance.
7. Two (2) sets of landscape and irrigation plans, approved by the Planning Division, shall be attached to two of the final building plan sets.
8. Street trees in the landscape parkway shall be selected from Appendix D of the Streetscape and Median Development Standards and appropriately sized and spaced (e.g. 15-gallon size planted at 30' on centers), or as determined by the Development Services Director once the determination of parkway size is made. The final landscape concept plan shall indicate the design and material of these areas, and the landscape/hardscape plan shall be approved by the Planning Division prior to issuance of building permits.
9. Transformers, backflow preventers, and any other approved above-ground utility improvement shall be located outside of the required street setback area and shall be screened from view, under direction of Planning staff. Any deviation from this requirement shall be subject to review and approval of the Development Services Director.
10. No exterior roof access ladders, roof drain scuppers, or roof drain downspouts are permitted. This condition relates to visually prominent features of scuppers or downspouts that not only detract from the architecture but may be spilling water from overhead without an integrated gutter system which would typically channel the rainwater from the scupper/downspout to the ground. An integrated downspout/gutter system which is painted to match the building would comply with the condition. This condition shall be completed under the direction of the Planning Division.
11. Prior to issuance of certificate of occupancy, the applicant shall construct a minimum 6-foot tall decorative block wall around the perimeter of the project site, unless otherwise approved by the Developer Services Director. Where walls on adjacent properties already exist, the applicant shall work with the adjacent property owner(s) to prevent

- side-by-side walls with gaps in between them and/or provide adequate privacy screening by trees and landscaping.
12. The subject property's ultimate finished grade level may not be filled/raised in excess of 30 inches above the finished grade of any abutting property. If additional fill dirt is needed to provide acceptable on-site storm water flow to a public street, an alternative means of accommodating that drainage shall be approved by the City's Building Official prior to issuance of any grading or building permits. Such alternatives may include subsurface tie-in to public storm water facilities, subsurface drainage collection systems and/or sumps with mechanical pump discharge in-lieu of gravity flow. If mechanical pump method is determined appropriate, said mechanical pump(s) shall continuously be maintained in working order. In any case, development of subject property shall preserve or improve the existing pattern of drainage on abutting properties. Applicant is advised that recordation of a drainage easement across the private street may be required to fulfill this requirement.
 13. To avoid an alley-like appearance, the private street shall not be developed with a center concrete swale. The private street shall be complemented by stamped concrete or pervious pavers. The final landscape concept plan shall indicate the landscape palette and the design/material of paved areas, and the landscape/hardscape plan shall be approved by the Planning Division prior to issuance of building permits.
 14. Prior to issuance of building permits, the developer shall provide the Conditions, Covenants, and Restrictions (CC&Rs), or maintenance agreement to the Development Services Director and City Attorney's office for review. The CC&Rs or maintenance agreement must be in a form and substance acceptable to, and shall be approved by the Development Services Director and City Attorney's office. The CC&Rs or maintenance agreement shall contain provisions that effectively implement the following requirements: (1) require effective management of parking. If onsite parking is not appropriately managed, the Development Services Director shall require implementation of corrective measure(s) to address onsite parking problems in the future; (2) require that the maintenance association, unless no maintenance association is required, contract with a towing service to enforce the parking regulations; (3) Allow third party intervention by the City of Costa Mesa; (4) Any subsequent revisions to the CC&Rs or maintenance agreement related to these provisions must be reviewed and approved by the City Attorney's office and the Development Services Director before they become effective.
 15. Applicant shall provide proof of establishment of a maintenance association prior to release of any utilities, unless exempted from association requirement.
 16. The project entrance is not designed for vehicular gates. A buyer notification shall be provided to future buyers that the community will not be able to accommodate gates without physical changes to the proposed ingress and egress configuration.
 17. If the project is constructed in phases, the perimeter wall, landscaping along the frontages and irrigation shall be installed prior to the release of utilities for the first phase.
 18. The applicant shall submit a Buyer's Disclosure Form to the Development Services for review/approval prior to issuance of building permits. The disclosure notice shall indicate that the most significant implication of no HOA for the City is the lack of an enforcement body for conditions which the City has an interest in maintaining and/or which City required as a condition of approval. For example, cross lot parking, access, or drainage easements or maintenance requirements may not be enforced over time by private individuals. The buyer's notice shall specify that the CC&R's includes a statement that the City is a third party beneficiary of the CC&R's and that the City may,

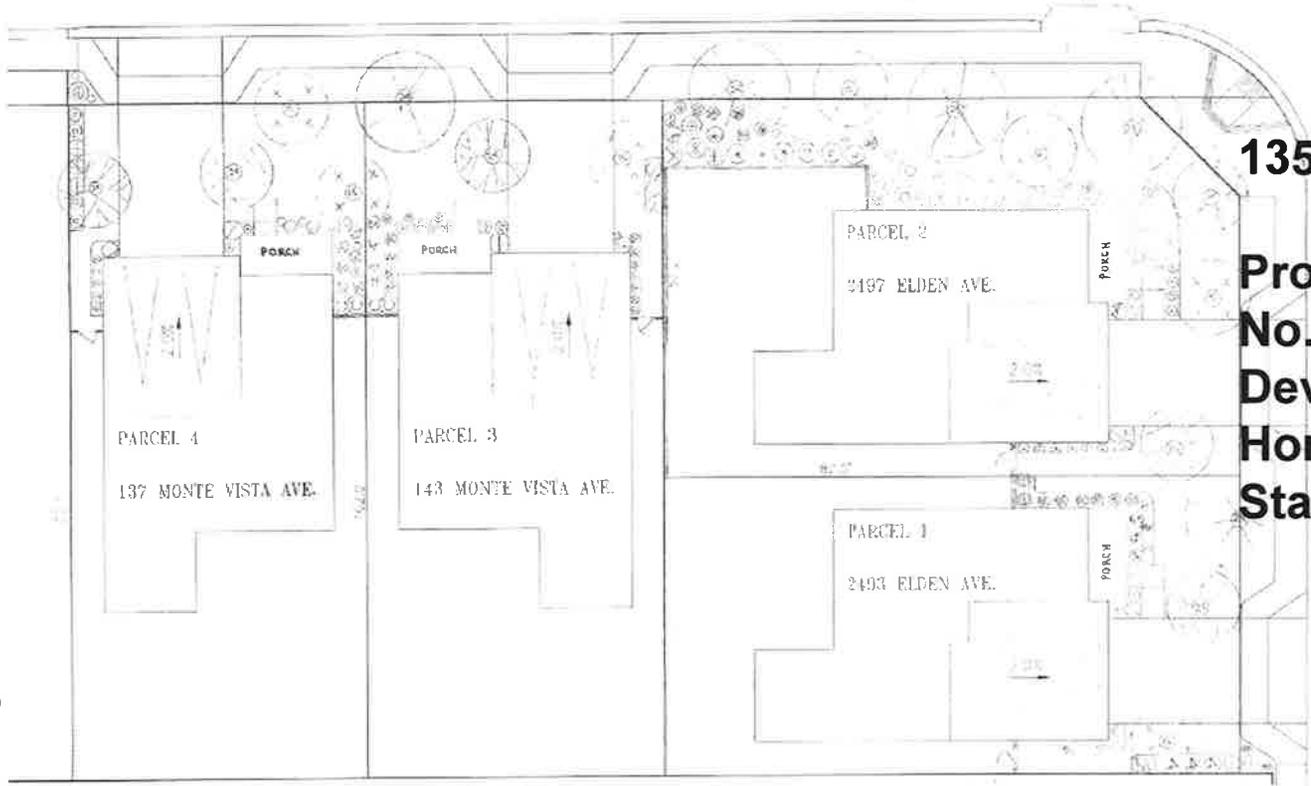
but is not required, to enforce such provisions. Both the buyer's notice and the CC&Rs shall be approved by the City Attorney's office prior to issuance of the first certificate of occupancy.

19. All units shall be provided with a small alcove inside or outside the unit to allow storage of at least two trash carts without encroaching into the garage space.
20. The applicant and future homeowners shall contract with a private waste disposal company that will provide full on-site trash and recyclable collection. There shall be no storage of trash bins or cans on public streets with the exception of temporary use of the right-of-way for rolling containers or loading to larger trash trucks.
21. The applicant shall disclose the following information to the future homebuyers prior to execution of a sale agreement:
 - The type, thickness, and R-value of the insulation that has been installed in the home
 - Any potential hazards or lead-based paint
 - Uses other than residential and any unusual zoning in proximity to the project
 - Distance to airport if within two miles
 - Any special costs that will be incurred by the lot buyer as a result of the installation of a building foundation or any other construction due to unusual soil/geological conditions
 - If there is fill in excess of 2 feet
 - Schools servicing subdivision and any special conditions
 - Any unusual flooding conditions
 - Conditions of approval by the City and any resale restrictions
 - Dedications and easements
 - Project phasing plan
 - Recorded CC&Rs
22. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to the release of occupancy/utilities. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
23. Prior to issuance of grading permits, developer shall identify to the Development Services Director a construction relations officer to act as a community liaison concerning on-site activity, including resolution of issues related to dust generation from grading/paving activities.
24. Open parking spaces be designated as unreserved, available, open guest parking for all visitors to the site. Signage will be posted to indicate that these spaces are available to all visitors. The CC&Rs shall contain restrictions prohibiting parking in the driveway and in front of garage doors.
25. Residents shall park vehicles in garage spaces. Storage of other items may occur only to the extent that vehicles may still be parked within the require garage spaces.
26. The applicant and each successor in interest to the property which is the subject of this project approval, shall defend, indemnify and hold harmless the City of Costa Mesa and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees (i) to attack, set aside, void or annul any approval, permit or land use entitlement of the City, City Council, or City Planning Commission concerning the herein use, application or project, or (ii) regarding the applicability of federal and state laws governing common-interest developments to the applicant or the subject property.
- 27.* A "Notice to Buyers" shall disclose that the project is located within an area designated as Light Industry in the City of Costa Mesa General Plan and is subject to existing and

potential annoyances or inconveniences associated with industrial land uses. The Notice shall disclose the existing surrounding industrial land uses, including but not limited to, operational characteristics such as hours of operation, delivery schedules, outdoor activities, and noise and odor generation. In addition, the Notice shall state that the existing land use characteristics are subject to change in the event that new businesses move or existing businesses change ownership. The Buyer's Notice shall be reviewed/approved by the City Attorney's office and Development Services Director prior to recordation. The Buyer's Notice shall serve as written notice of the then existing noise environment and any odor generating uses within the mixed-use development and within a 500-foot radius of the mixed use development, as measured from the legal property lines of the development lot. The Buyer's Notice shall be remitted to any prospective purchaser or tenant at least 15 days prior to close of escrow, or within three days of the execution of a real estate sales contract or rental/lease agreement, whichever is longer. The Buyer's Notice shall also indicate that business operations in the live/work units shall be consistent with the land use matrix of the Mesa West Bluffs Urban Plan subject to zoning authorization and obtaining a business license.

- 28.* Prior to the issuance of Building Permits, the Applicant shall submit a Lighting Plan and Photometric Study for the approval of the City's Development Services Department. The Lighting Plan shall demonstrate compliance with the following:
- The mounting height of lights on light standards shall not exceed 18 feet in any location on the Project site unless approved by the Development Services Director.
 - The intensity and location of lights on buildings shall be subject to the Development Services Director's approval.
 - All site lighting fixtures shall be provided with a flat glass lens. Photometric calculations shall indicate the effect of the flat glass lens fixture efficiency.
 - Lighting design and layout shall limit spill light to no more than 0.5 footcandle at the property line of the surrounding neighbors, consistent with the level of lighting that is deemed necessary for safety and security purposes on site.
 - Glare shields may be required for select light standards.

* Applicable to projects in urban plan areas.



135 Monte Vista Ave.

Project Site Area: 0.21 Acre

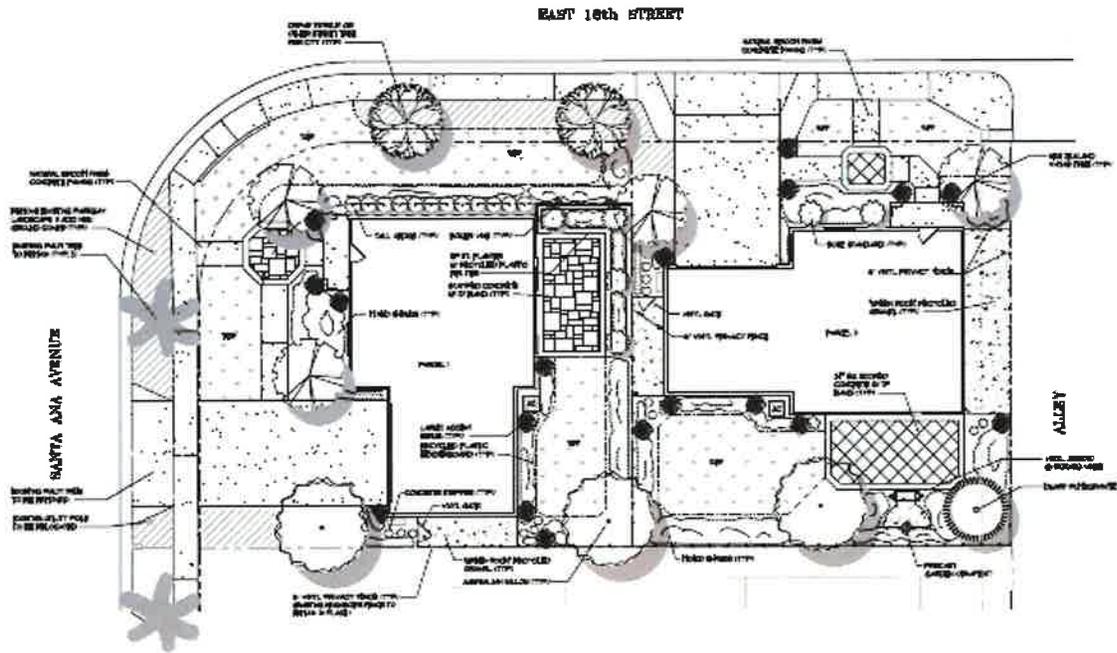
No. of Units: 4

**Developer: Harbinger
Homes, Inc.**

Status: Under Construction

22





1596 Santa Ana Ave.

Project Site Area: 0.194 Acre

No. of Units: 2

Developer: RSI

Status: Construction Completed

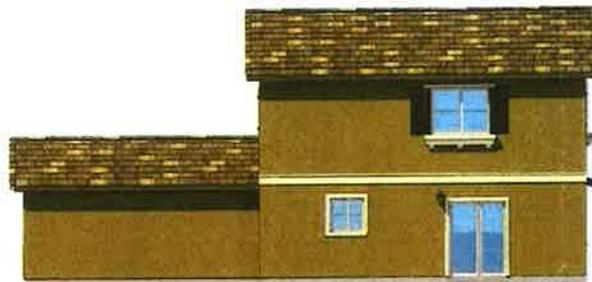
23



Front Elevation



Right Elevation



Rear Elevation



Left Elevation

24



2157 Tustin Ave.

Project Site Area: 1.2 Acres

No. of Units: 14

Developer: Matt White

Status: Approved



25



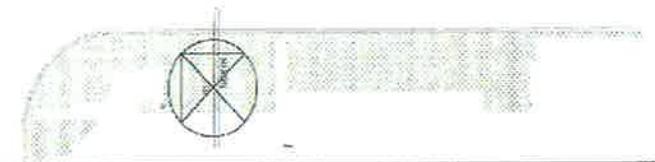
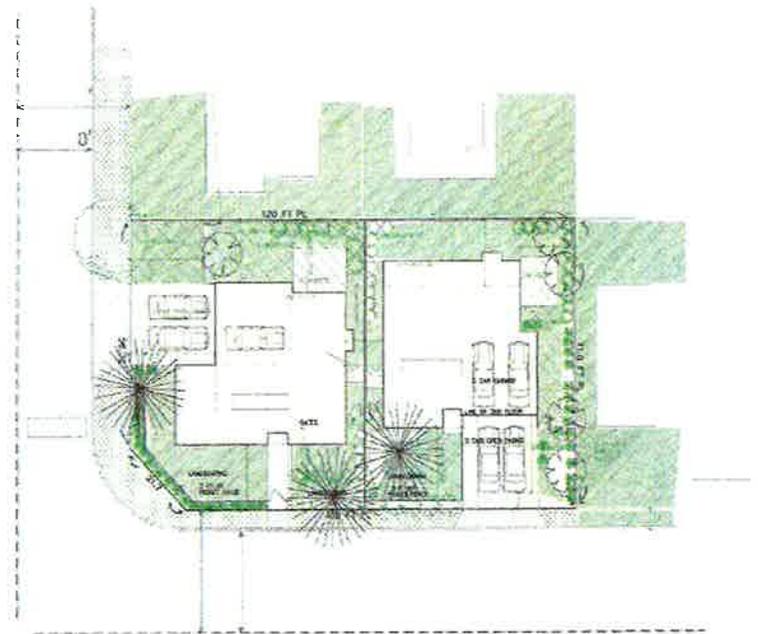
2590 Orange Ave.

Project Site Area: 0.20 Acre

No. of Units: 2

**Developer: Jim Marino,
Marino Investments**

Status:



December 5, 2013

Chairman Jim Fitzpatrick
 Planning Commission
 City of Costa Mesa
 77 Fair Drive
 Costa Mesa, CA

Re: Support for Agenda Item #9 Amendment to Title 13 Related to Small Lot Ordinance

Dear Chairman Fitzpatrick,

On behalf of our membership, I write to urge your recommendation to City Council to approve the proposed small lot development ordinance. Small lot development represents an important new land use tools to help meet market demand in established communities, support regional housing policy, and stimulate the local economy. For many individuals and families, small lot communities represent a cost attainable home-ownership opportunity.

The Building Industry Association of Southern California, Orange County Chapter (BIA/OC) is a non-profit trade association of over 1,000 companies employing over 100,000 people affiliated with the home building industry. The Orange County Chapter represents the largest member base within BIA Southern California. Our mission is to champion housing as the foundation of vibrant and sustainable communities.

Meeting Population Growth and Housing Need

The Southern California Association of Governments (SCAG) projects Orange County's population growth to be 417,000 new residents over the next 20 to 25 years.¹ Presently, there is a housing shortage in Orange County. Conversely, home prices have appreciated 21% in one year. The combination of population growth and limited supply will continue to complicate the challenge of housing accessibility and affordability for the City and the region. For this reason, regional housing policy under Senate Bill 375 supports the practice of infill development. Small lot development represents one of many housing strategies that the City may use to alleviate demand for housing, revitalize areas, and fulfill a fair share of regional housing goals.

¹ Southern California Association of Governments. Regional Forecast Appendix.
http://rtpscscs.scag.ca.gov/Documents/2012/final/SR/2012IRTP_GrowthForecast.pdf



**Orange County
 Chapter**

Building Industry Association
 of Southern California

17744 Sky Park Circle
 Suite 170
 Irvine, California 92614
 949.553.9500
 fax 949.769.8943
www.biaoc.com

PRESIDENT
 DAVE BULLOCH
 STANDARD PACIFIC HOMES

VICE PRESIDENT
 DONNA KELLY
 LENNAR

TREASURER
 JOAN MARCUS-COLVIN
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SECRETARY
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 TOM RHODES
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MEMBER-AT-LARGE
 MIKE WINTER
 SARES-REGIS GROUP

MEMBER-AT-LARGE
 JIM YATES
 RANCHO MISSION VIEJO

CHIEF EXECUTIVE OFFICER
 MICHAEL BALSAMO



Economic Benefits of Housing

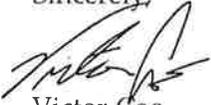
In an annual study of 100 metropolitan markets, the National Association of Home Builders found that three jobs and over \$90,000 in government revenue are initially generated by every home built. Developer fees are often earmarked specifically for maintaining quality of life through the improvements of schools, parks, roads, police and fire services.

On average, over three-fifths of a household's income is spent in the local economy. In a hypothetical situation where 50 homes are built in Costa Mesa, approximately \$2.0 million will be spent on local businesses and over \$157,000 will be generated in sales tax annually. By providing tools to redevelop underutilized and under-performing properties, the City's Small Lot Ordinance would help foster economic development and infrastructure improvement that contributes directly to the quality of life of Costa Mesa residents.

For these reasons, we support urge your recommendation to City Council to approve the Small Lot Ordinance. We commend the City for the extensive outreach and research on how small lot development can benefit the community of Costa Mesa. We believe the proposed ordinance will streamline planning and building processes, and establish guidelines for homes to integrate with the community fabric. As always, we remain a resource to the City on important issues that are related to the well-being of our local communities.

Thank you for your time and thoughtful consideration.

Sincerely,



Victor Cao
Government Affairs Manager

Cc: Mr. Gary Armstrong, Deputy CEO
Ms. Claire Flynn, Asst. Dev. Services Director

ASHABI, MINOO

From: Sheila Pfafflin [REDACTED]
Sent: Wednesday, September 11, 2013 10:49 AM
To: ASHABI, MINOO
Subject: Opposition to proposed zoning ordinance for small lot single family developments

Dear Ms. Ashabi;

I am strongly opposed to the proposed zoning ordinance. The obvious solution to repeated variance requests is not to grant them, except in a special (and unusual) set of circumstances.

This ordinance seems to wipe out numerous protections provided by our current zoning, which should not be wiped out, but respected. If a developer cannot conform to current requirements, the development should not be built.

Sheila Pfafflin



MELIA HOMES

8951 Research Drive, Suite 100, Irvine, CA 92618

p 949-759-4367
f 949-988-7179
www.melia-homes.com

January 27, 2014

Chairman Fitzpatrick and Members of the Planning Commission:

It has come to my attention that the proposed Small Lot Ordinance has evolved from an earlier version and raises some concerns in the development community. As I and others presented to Planning Staff very early in the conceptual discussion process for development of a small lot ordinance, it would be important to retain some flexibility in the regulations instead of establishing rigid standards. Every situation cannot be addressed with a standard, but can be addressed properly thru discretionary review process. It is important to have some flexibility in the application of standards and review so as to avoid the need for Variances. Otherwise you may end up in the same situation that currently exists, where property owners may be requesting variances in order for a project to be viable.

The ordinance should have a form of Alternative Development Standard criteria or provision that could be proposed and evaluated with mandatory findings required. Orange County Planned Community regulations typically allow alternative development standards with findings of superior project design required. Under this type of adopted criteria, if an applicant can show benefit of an alternate design or development standard (i.e. setback), then the staff and decision makers have the ability to make that determination without the requirement of a variance request and variance findings.

In addition, rigid standards often limit the creativity of a project design and typically cannot be applied in all instances. Parcel sizes and shapes vary greatly from site to site and typically cannot be addressed with a single rigid standard. As an example, these latest revisions to the new small lot ordinance standards requiring increased side yard setbacks of 10' would have precluded our developed and sold projects in the city, and would have precluded the development with the detached product recently entitled on Victoria. In addition, a rigid front setback of 20 feet is a change in that there has typically been an allowance for administrative adjustment with consideration of lot sizes, shapes, adjacent development, surrounding development and streets for consideration of a modification.

Part of the reason that the LA City Small Lot Ordinance has been so successful is that it requires minimum setbacks from adjacent parcels that are not created by the proposed subdivision. Its minimum setback is 5' - which may not be appropriate for all instances in Costa Mesa, but the ordinance allows for such a small setback on all perimeters and it allows Staff and decision makers to evaluate the development compatibility through the design review and public hearing process. The proposed rigid setback criteria for side and front setbacks are not changing much in terms of development standards and flexibility from current code requirements.

Respectfully submitted,

Chad Brown
Development Manager, Melia Homes

PH-2

ASHABI, MINOO

From: Evan Little [elittle@surterreproperties.com]
Sent: Monday, January 27, 2014 3:10 PM
To: ASHABI, MINOO
Cc: Jeff Bowers
Subject: RE: Small Lot Procedural Change Staff Report Available

Hi Minoo,
From what this developer, who's currently doing a small lot ordinance project in LA, is saying, it sounds like a critical component for this ordinance to work.

If you think the email is appropriate to forward on to the planning commission, please do.

Thanks,

Evan Little

[REDACTED]
elittle@surterreproperties.com
www.PermacultureProperties.com
CA Real Estate Lic #01450867

surterre_f NAR GREEN PMC

From: ASHABI, MINOO [MINOO.ASHABI@costamesaca.gov]
Sent: Monday, January 27, 2014 3:02 PM
To: Evan Little
Subject: RE: Small Lot Procedural Change Staff Report Available

Dear Evan,

Did you want this information to be forwarded to the Planning Commission? The ordinance is not addressing the permit process; or any waiver with respect to final map approval.

Minoo Ashabi, AIA
Principal Planner
City of Costa Mesa
714/754-5610
minoo.ashabi@costamesaca.gov

From: Evan Little [mailto:elittle@surterreproperties.com]
Sent: Monday, January 27, 2014 2:48 PM
To: ASHABI, MINOO
Cc: Jeff Bowers
Subject: FW: Small Lot Procedural Change Staff Report Available

Hi Minoo,

I'm forwarding an email from a developer who's doing a small lot project in LA right now. I hope the information below is helpful and please feel free to contact Jeff Bowers, who's CC'd.

Thanks,

Evan Little

elittle@surterreproperties.com
 www.PermacultureProperties.com
 CA Real Estate Lic #01450867



From: Jeff Bowers [jeff@bowers-properties.com]
Sent: Monday, January 27, 2014 11:16 AM
To: Evan Little; 'Evan Little'
Subject: FW: Small Lot Procedural Change Staff Report Available

Evan,

See the link below to the proposed amendment change in LA that only requires the developer to only obtain a covenant to attain a building permit after tentative map has been approved but before final map approval. This is on its way to getting passed. Currently, we have to apply for numerous variances (instead of the covenant) to build prior to final map as the ultimate small lot project (once final map is approved) does not fall in line with zoning code on the underlying zoning. I realize this is tough to understand and I haven't studied CM's small lot proposal to understand if this will be an issue. With that said, for developers to be attracted to the ordinance, CM will need to have some sort of procedure in place that will allow the developer to build after tentative map approval and before final map approval. They may even already have this procedure, I'm not sure. Just forward this to them and hopefully it can get to the right place.

From: Allison Gay [redacted]
Sent: Thursday, December 05, 2013 1:02 PM
To: Allison Gay
Cc: Derek Leavitt; "Christian D. Nívar"; Krystal Nívar; Shaun Skoog
Subject: Fwd: Small Lot Procedural Change Staff Report Available

Hi everyone,

We wanted to forward this message about the Small Lot Subdivision Ordinance Amendment Hearing from the staff member. We also want to remind you that the City Planning Commission Hearing is scheduled for Thursday, December 19th. I would encourage everyone to read the staff report for themselves, but it looks like our hard work is paying off with a favorable report. I've included a direct link below:

http://cityplanning.lacity.org/Code_Studies/Misc/SLO_CPC_%20FINALPACKAGE.pdf

Please take a look at the staff report, and we look forward to seeing those of you that can attend the hearing in two weeks.

Thanks,

01/27/2014

31



**DEPARTMENT OF CITY PLANNING
RECOMMENDATION REPORT**

CITY PLANNING COMMISSION
DATE: December 19, 2013
TIME: after 8:30AM
PLACE: Van Nuys City Hall
 14410 Sylvan Street
 Council Chamber, 2nd Floor
 Los Angeles, CA 91401

CASE NO: CPC-2013-2450-CA
CEQA: ENV-2013-2451-CE
LOCATION: Citywide
COUNCIL DISTRICT: All
PLAN AREAS: All

PUBLIC HEARING REQUIRED

SUMMARY: The proposed ordinance (Appendix A) modifies Section 17.06 of the Los Angeles Municipal Code (LAMC) to allow construction of small lot subdivisions to commence prior to the recordation of the final map, with recordation of a covenant.

RECOMMENDED ACTIONS:

1. **Adopt** the staff report as its report on the subject.
2. **Adopt** the findings included in Attachment 1.
3. **Adopt** the Categorical Exemption as the CEQA clearance on the subject.
4. **Approve** the proposed ordinance (Appendix A) and recommend its adoption by the City Council.

MICHAEL J. LOGRANDE
 Director of Planning

ALAN BELL, AICP
 Deputy Director

THOMAS ROTHMANN
 Senior City Planner, Code Studies Unit

DEBORAH KAHEN, AICP
 City Planner, Code Studies Unit
 Telephone: (213) 978-1202

ADVICE TO PUBLIC: *The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communication may be mailed to the Commission Secretariat, 200 North Main Street, Room 272, Los Angeles, CA 90012 (Phone No. 213/978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent a week prior to the Commission's meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to these programs, services, and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request no later than three working days (72 hours) prior to the meeting by calling the Commission Secretariat at 213/978-1300.

SUMMARY

In 2005, small lot subdivision regulations were adopted by the City Council (ordinance 176,354) in order to facilitate a greater diversity of home ownership options. The ordinance allows row homes or a cluster of single-family homes on small lots to be developed in multi-family zones as an alternative to apartment and condominium buildings. Small lot development has been popular with both housing developers and buyers.

The proposed ordinance (Appendix A) remedies a procedural inefficiency unforeseen at the time of adoption. After a small lot subdivision project has received approval from the Department of City Planning, it can take up to two years for the final subdivision map to record. Unlike apartments and condominiums, building permits for small lot subdivisions cannot be issued until the map records. Therefore, to begin construction applicants must choose between waiting for the map to record (which is risky due to increased market uncertainty and holding costs) or filing for deviations to allow construction on the lot that is not yet technically subdivided. Both options are inefficient and unnecessary.

The proposed ordinance amends Section 17.06 of the Los Angeles Municipal Code to allow building permits for small lot subdivisions to be obtained prior to the recordation of the final map when a covenant and agreement is filed that acknowledges that the Certificate of Occupancy will not be issued until the final map is recorded.

STAFF REPORT

Initiation

On February 12, 2013, the Planning Director initiated the proposed amendment to the 2005 Small Lot Subdivision Ordinance.

Background

Small Lots

The small lot subdivision regulations allow a series of single-family homes on small lots to be built within the allowable density of the underlying multi-family zone. Small lot subdivisions are usually built to a density less than what is allowed. The fee simple homes have separate foundations, no shared walls, and are situated within individual lots. The provisions, located in Section 12.22 C.27, are primarily a collection of exceptions from single-family zone home construction. These exceptions include: reduced lot widths; alternative paths of vehicular access; reduced front, side, and rear yards; and no passageway requirement. Small lot subdivisions are permitted on multi-family lots (zones R2 when adjacent to a commercial or industrial zoned lot, all RD, R3, R4, R5, RAS3, and RAS4) as well as on lots zoned commercial and parking (C and P).

Small lot subdivisions are attractive to many home buyers. Those built as urban infill projects often provide single-family homes in walking distance to retail and services, are

close to job centers and mass transit, have less yard maintenance needs, and offer new construction at costs sometimes more affordable than comparable homes in the same neighborhood. Small lots can also encourage community when units have common driveways or direct access to the sidewalk. Despite the significant housing market downturn that occurred shortly after inception of the ordinance, the completion of 39 projects totaling 361 units as of November 15, 2013 is substantial. Growth in applications is expected to coincide with the current steady housing recovery.

While small lot subdivisions are permitted under the provisions of the Zoning Code and consistent with the State Subdivision Map Act, applicants must still file a case for a subdivision map with DCP. The required case, a vesting tentative tract map or preliminary parcel map, calls for dividing the subject lot into multiple lots to coincide with the number of proposed homes. Review of the plans includes notice to property owners within 500 feet of the project site and to the local Neighborhood Council. DCP also commences an environmental review process.

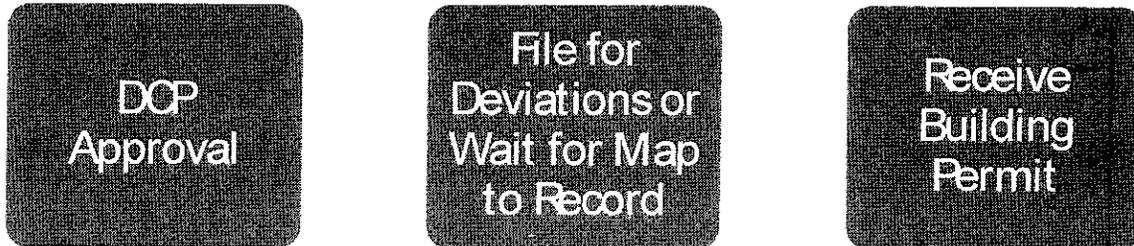
Procedural Inefficiency

After DCP has approved a subdivision map for a small lot project, an applicant must still wait for the map to be recorded by the Department of Public Works and the County Board of Supervisors. During this time (often over a year), the developer cannot secure building permits since the new lot lines do not technically exist. Until the map is recorded the project is viewed as a collection of detached unit buildings on a multi-family zoned lot rather than the approved small lot subdivision of single family homes on single family lots. Until the map has recorded, these single-family homes must meet the provisions of traditional single-family zoning rather than the specific provisions for small lot projects.

For example, an applicant has applied for a vesting tentative tract map. The project is in full compliance with the small lot subdivision provisions: he or she intends to build a six-unit small lot subdivision on an RD2 lot, and in lieu of the required 15' rear yard setback for a single-family home, the project supplies a 5' rear yard setback (as permitted in the small lot subdivision provisions).

After receiving vesting tentative tract map approval from DCP, the applicant must either (1) request a deviation from the code through an adjustment for the reduced setback (or variance for other deviations) or (2) wait a significant period of time for the final map to record. In most cases, applicants pursue deviations from the zoning code. A situation has now been created in which, due to the timing of when a map records, an applicant is requesting deviations from what is permitted in the zoning code.

CURRENT PROCESS



Although deviations from the Zoning Code can allow the project to proceed, they are problematic for developers, neighborhoods, and City staff. They are an extra cost that can reflect in the project through either increased unit costs or a reduction in construction detail or amenities. They are also confusing to the local neighbors: it is difficult to discern which requests meet permitted small lot provisions and which requests are asking to deviate from the small lot provisions. They also unnecessarily absorb staff resources and undermine the initial goal of allowing this project type to be built by-right in the aforementioned multi-family zones.

It usually takes a lengthy amount of time for a final map to record. Per Section 17.07 of the LAMC, after receiving a vesting tentative tract or preliminary parcel map approval from the City, applicants have 36 months to apply for a final map. Once an application is submitted, it takes DPW and the County an average of six months to record the final tract or parcel map (although in some instances it can take up to 22 months). Construction itself is a lengthy process, and if development cannot commence until the final map is complete, the date at which the new units can finally be occupied is extended out into the future without any gain to the project or neighborhood. By exposing the project applicant to unnecessary expense and delay, project financing can become jeopardized and the project could be subject to unknown market changes.

Apartment and Condominiums

This procedural inefficiency during the development of multi-family property is unique to small lot subdivisions. Prior to the adoption of the small lot subdivision regulations, apartment and condominium buildings were nearly the only building form developed on multi-family properties. No subdivision map is required for apartment buildings because there is no division of air rights being sold to occupants. There is single ownership over the entire lot. Building permits are issued for condominium buildings before or after the final map is recorded. If construction begins prior to recordation, the units are considered apartments and public improvements otherwise required for a condominium project are

guaranteed to the satisfaction of the Bureau of Engineering through the filing of a B-permit. Once the tentative tract map is recorded, the units may be sold for ownership.

Proposed Ordinance

The proposed ordinance (Appendix A) adds language to Section 17.06 of the LAMC allowing DBS to issue building permits to applicants who have received a vesting tentative tract or preliminary parcel map approval from DCP for a small lot subdivision. Thus, applicants can begin project construction without having to request deviations from the code or wait for the final map to record. To ensure that applicants follow through with map recordation, applicants will sign a covenant and agreement with the City acknowledging that a Certificate of Occupancy will not be issued until the final map has been recorded. The proposed ordinance makes no changes to what is physically allowed to be built or where it can be built, or to the noticing requirements for applications filed. Nor will the ordinance change procedures for a multiple-unit complex on a single lot.

PROPOSED PROCESS



Several circumstances would render a project ineligible to receive building permits prior to recordation of the final map. Projects with a condition of approval requiring a map revision are not eligible because DCP will need to review plans again after the revision is made prior to construction. This is a temporary condition, because the project is eligible to participate once the map revision is completed. Projects including a street or alley merger or vacation are not eligible because the developer cannot legally claim the public land until the final map records. Lastly, projects with off-site common access cannot participate because the final map must be recorded in order to effectuate continuous on-site and off-site common access. The last two circumstances are not common; therefore very few projects would be affected.

The proposed ordinance establishes a balance between private and public interests by allowing construction to commence prior to final recordation while also guaranteeing that the subdivision process will be completed properly.

Public Outreach

DCP staff held a public hearing on September 17, 2013. Notice was sent to Neighborhood Councils and relevant developer-interest groups. More than 20 individuals were in attendance, representing architects, developers, and community stakeholders. Twelve of those in attendance provided testimony. Additionally, 23 letters from individuals, the development community, and community groups have been received.

The development community and individuals that submitted written comment unanimously support the ordinance. In addition to the points made above, their comments also cited the following benefits of adopting this ordinance:

- Spurs economic growth through development
- Fosters neighborhood revitalization
- Keeps young professionals (the core demographic of small lot buyers) living in the City
- Encourages smarter growth using a single-family product
- Creates a more equitable development process, as it removes a burden that does not apply to most multi-family projects

Neighborhood groups were split on the issue. The Eagle Rock, Mar Vista, and Greater Wilshire Neighborhood Councils submitted letters of support due to reasons including following: construction can start immediately, the community benefits when vacant properties are developed sooner; the elimination of deviation requests to begin construction of a project that otherwise complies with code are eliminated, and will therefore make proposals more transparent; time and work demands will be reduced on planners, allowing them to focus on other community projects.

The Harbor Gateway North Neighborhood Council submitted a letter in opposition of the proposed ordinance. Their concerns rest with the initial small lot subdivision provisions. They expressed that these projects host inadequate parking, minimal landscaping and design, and are being built at an inappropriate scale.

Staff also received verbal feedback from community members on the phone and in person. Despite multiple conversations with staff, some misinformation about the proposal persists. One misperception is that the proposed ordinance would allow projects to be built before the plans are final. This understandable confusion between plans and maps led some community members to be concerned that DCP would be allowing projects to be built before plans were approved. This is not the case. Projects must still complete public case processing and receive plan approval before applying for building permits.

Another concern is that noticing would change. This ordinance does not change noticing or public hearing requirements for any subdivision case. It does, however, remove a common deviation request that is actually requesting entitlements intended to be by-right. The confusion this causes can breed mistrust and misunderstandings.

Lastly, independent of this proposed ordinance but related to small lot subdivisions, community members expressed dissatisfaction with the rezoning of single-family lots in order to employ small lot subdivisions. The proposed ordinance neither enhances nor inhibits this practice.

Several changes to the proposed ordinance were made in response to public comment:

- Projects with map revisions, once revised, should be eligible to begin construction prior to map recordation.
- “The Department of Building and Safety may issue permits based upon the provisions the Advisory Agency approves in the tentative or preliminary map and its conditions of approval” was changed to “The Department of Building and Safety shall issue permits...”
- “The dedication, improvement, and sewer requirements identified in the tentative or preliminary map approval or its conditions of approval must be provided at the time of building permit issuance” was changed to “...must be guaranteed to the satisfaction of the Bureau of Engineering...”

The following change, suggested through public comment, was not incorporated:

- In addition to DBS, the Bureau of Engineering and Fire Department shall also be required to issue permits. The Bureau of Engineering and the Fire Department have specific technical expertise. The proposed ordinance is not intended to override the review process of these departments.

Small Lot Design Guidelines

Related to the proposed ordinance is a separate effort to update the Small Lot Design Guidelines (Guidelines.) The Guidelines have recently been updated to accommodate feedback heard from the community. The Guidelines assist in addressing spatial complexities unique to small lot settings. Considerations include placement of shared amenities such as driveways and pathways, neighborhood context, and proximity of adjacent structures. Incorporating the Guidelines into a project's design will encourage more compatible architecture, attractive residential projects, context-sensitive design, opportunities for pedestrian activity, and overall contribute to an enhanced sense of place. Projects that are not in compliance with the Guidelines may be subject to delays and community appeals.

Conclusion

This amendment stands to benefit developers, neighborhoods, as well as the City in general. It will eliminate the superfluous step of applying for deviations from the zoning code, which muddy project descriptions that neighborhoods rely on, cause undue burden on developers, and consume staff resources that would be better spent on other planning projects. Adoption of the ordinance strikes a balance between developer and City interests while advancing the main goal of the initial small lot regulations: to increase the diversity of housing stock in a by-right manner.

APPENDIX A

ORDINANCE NO. _____

A proposed ordinance amending Section 17.06 of the Los Angeles Municipal Code to allow building permits for small lot subdivisions to be obtained prior to the recordation of the final map when a covenant and agreement is filed.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. Paragraph (f) of Subdivision 2 of Subsection A of Section 17.06 of the Los Angeles Municipal Code is added to read:

(f) Small lot subdivision applicants who have received a vesting tentative tract map approval or preliminary parcel map approval may obtain a building permit prior to the recordation of the final map when a recorded covenant and agreement is filed. This covenant shall state that the applicant and his or her successors and assignees agree that the building permits are issued on the condition that a Certificate of Occupancy (temporary or final) for the buildings shall not be issued until after the final map has been recorded. The Department of Building and Safety shall issue permits based upon the provisions the Advisory Agency approves in the tentative or preliminary map and its conditions of approval. The dedication, improvement, and sewer requirements identified in the tentative or preliminary map approval or its conditions of approval must be guaranteed to the satisfaction of the Bureau of Engineering at the time of building permit issuance. Projects with the following features are not eligible to receive building permits prior to the recordation of a final map: off-site common access or a street or alley vacation or merger.

Sec. 2. The City Clerk shall certify that...

ATTACHMENT 1

LAND USE FINDINGS

The Department of City Planning recommends that the City Planning Commission find:

1. In accordance with Charter Section 556, that the proposed ordinance (Appendix A) is in substantial conformance with the purposes, intent, and provisions of the General Plan. Specifically, the proposed ordinance implements Economic Development Objective 7.4 of the Framework Element, "Improve the provision of governmental services, expedite the administrative processing of development applications, and minimize public and private development application costs" and Goal 7G, "A range of housing opportunities in the City." It also implements Housing Objective 4.4 of the Framework Element, "Reduce regulatory and procedural barriers to increase housing production and capacity in appropriate locations."

The proposed ordinance streamlines the process to develop small lot subdivisions by removing procedural barriers without compromising the level of input available to the neighboring community and review by the City. The proposed ordinance supports production of a relatively new and popular form of housing.

2. In accordance with Charter Section 558 (b) (2), the proposed ordinance (Appendix A) is in substantial conformance with public necessity, convenience, general welfare and good zoning practice. Consistent with City policies to streamline development and provide a range of housing opportunities in the city, the ordinance removes a disruption in the approval process that is to the detriment of the local community, the developer, and the City in general.

ENVIRONMENTAL FINDING

In accordance with the California Environmental Quality Act (CEQA), this ordinance meets the criteria of a General Exemption pursuant to Article III, Sections 15301 and 15305, Classes 1 and 5 of the CEQA Guidelines. The proposed ordinance (Appendix A) is determined to constitute "negligible or no expansion of the use existing at the time the exemption is granted," and involves only administrative changes to case processing that do not change the physical product.

Sample/Example - Ladera Ranch Planned Community.

SECTION III

RESIDENTIAL PLANNING AREAS

A. PURPOSE & INTENT

The purpose of these provisions is to regulate the planning and development of the residential planning areas. These regulations provide for a variety of residential uses and also allow for community facilities and structures accessory to the main residential uses. It is the intent of these regulations to be responsive to changing community needs and goals and to allow and encourage innovative community design and neighborhood mix.

Four distinct product types are discussed in this document; conventional single family detached, single family attached, planned concept detached and multiple family dwellings. Each product type has distinguishing features, such as the dwellings' relationships to each other (detached v. attached), the number of dwellings per building site (single family attached v. multiple family) and the density of development (conventional single family detached v. planned concept detached). All product types are fully defined under "dwelling units" in Section II. Development standards for each of the four product types are outlined in Chapter H of this Section.

To be consistent with the Orange County General Plan, the ultimate control for residential development is the maximum number of dwelling units permitted in each residential category as indicated on the Planned Community (P.C.) Development Map and Statistical Table. All Planning Areas shall be developed within the maximum dwelling units indicated in the Statistical Table, as revised. The P.C. Development Map and Statistical Table may be revised in accordance with Section XI. Development standards for residential projects shall be as described in this Section except that alternative site development standards may be established by approval of an ~~Area Plan or Site~~ Development Permit per Sections XI or XII.

Design Review

B. PRINCIPAL PERMITTED USES

1. Public and private utilities regulated by state law and exempt from local land use review.

C. PRINCIPAL PERMITTED USES SUBJECT TO AN AREA PLAN

1. Conventional single-family detached dwellings.
2. Attached single-family dwellings.
3. Public and private neighborhood or community non-commercial recreation centers and facilities including, but not limited to swimming pools, tennis courts, lakes, clubhouses, stables and trails.
4. Uses and structures customarily incidental or necessary to residential uses including, but not limited to garages, public and private parks, trails, greenbelts and common areas.
5. Golf courses and ancillary uses such as water reservoirs, maintenance and storage facilities.

D. PRINCIPAL PERMITTED USES SUBJECT TO AN AREA PLAN AND SITE DEVELOPMENT PERMIT

1. Planned Concept Detached Dwellings.
2. Multiple family dwellings.

Section XII

c. Preliminary Landscape Plans - including the following information:

- (1) General location of all plant materials, by common and botanical names.
- (2) Size of plant materials, where applicable.

2. The above listed materials shall be submitted in the form and number required by the Director, EMA. The Site Plan shall be accepted for filing when the above described materials have been submitted in the required form and number. The Director, EMA, Zoning Administrator or the Planning Commission, as required, shall review and take formal action on the proposal in a timely manner after acceptance.

D. PROCEDURES AND AMENDMENTS

1. A site development permit shall be processed per Section 7-9-150.3(d), Administrative Action except as otherwise specified by this text. Changed plans may also be submitted to the Director, EMA, for approval. If the Director determines that the proposed changed plan is a minor amendment of no significant effect, and complies with the spirit and intent of the original action, he may approve the changed plan without further compliance with Section 7-9-150.

2. A site development permit may be approved which establishes alternative site development standards for residential and non-residential projects and uses. The Zoning Administrator shall be the approving authority for all site development permits proposing to modify site development standards. The Zoning Administrator shall make the following findings as part of its approval of the site development permit:

a. General Plan. The use or project proposed is consistent with the General Plan.

b. Zoning Code. The use, activity or improvement(s) proposed by the application is consistent with the provisions of the Zoning Code.

c. CEQA. The approval of the permit application is in compliance with the requirements of the California Environmental Quality Act.

d. Compatibility. The location, size, design and operating characteristics of the proposed use will not create significant noise, traffic or other conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

e. General Welfare. The application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.

f. Equivalent or better project: The alternative development standards(s) will result in an equivalent or better project in terms of adverse impacts and benefits to the immediate and surrounding community.

3. If the land use regulations provided by this P.C. Program allow a site development permit to authorize a use not specifically identified as permitted by the enabling ordinance, such site development permit shall always require a public hearing before the Planning Commission per Section 7-9-150.3(e).

Most important finding

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Design review

**REGULAR MEETING OF THE CITY OF
COSTA MESA PLANNING COMMISSION**

January 27, 2014

These meeting minutes represent an "action minute" format with a concise summary of the meeting. A video of the meeting may be viewed on the City's website at www.costamesaca.gov or purchased on DVD upon request.

Commissioner McCarthy led in the Pledge of Allegiance.

ROLL CALL:

Present: Chair Jim Fitzpatrick
Vice-Chair Robert Dickson
Commissioner Colin McCarthy
Commissioner Jeff Mathews
Commissioner Tim Sesler

Staff: Gary Armstrong, Economic & Development Services Director
Jerry Guarracino, Interim Assistant Development Services Director
Fariba Fazeli, City Engineer
Mino Ashabi, Principal Planner
Mel Lee, Senior Planner
Martha Rosales, Recording Secretary

PUBLIC COMMENTS

Dana Lavin, Costa Mesa resident, addressed concerns and issues with sober living homes. She said the sober home issues needed to be processed better than the nuisance ordinance and suggested the creation of a task force made up of residents who could make findings and present those findings to the appropriate committees.

PLANNING COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner McCarthy thanked the Commissioners for their work with the Mesa Verde Classic and spoke about the phenomenal transformations that Costa Mesa's shopping destinations (The Triangle and SOCO) have had attracting families and consumers.

Commissioner Sesler gave an update regarding the 311 Application and referred residents to the City's website for filing complaints in the interim.

Vice-Chair Dickson spoke briefly about the Mesa Verde Classic. He also announced a Special Council-Planning Commission Study Session on January 28th at 4:30 p.m. in the Emergency Operations Center and encouraged residents to attend and voice their opinions as it pertained to land use alternatives and revitalizing certain parts of Costa Mesa.

Chair Fitzpatrick spoke about complaints and reported that only written formal complaints become part of a property's formal and historical record. He had staff

display the email address (planningcommission@costamesaca.gov) and phone number (714-754-5245) where residents could contact the Commissioners to make a statement as part of a formal record. Chair Fitzpatrick asked Commission Sesler to follow up and confirm that once the 311 application was up and running, inquiries to the 311 system would become part of a formal record. Chair Fitzpatrick, in response to Ms. Lavin's concerns, gave an update on the complexities of sober living homes that the City was not taking lightly.

CONSENT CALENDAR

1. Minutes for the meeting of January 13, 2014

MOTION: Approve the January 13, 2014 Minutes. Moved by Commissioner McCarthy, second by Vice-Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

PUBLIC HEARINGS

1.

Application No.	PA-13-08
Applicant:	Patrick Fiedler
Site Address:	751 Baker Street, Unit A
Zone:	C1
Project Planner:	Mel Lee
Environmental Determination:	Exempt

Description:

1. Conditional use permit for the sale of alcoholic beverages (beer, wine, distilled spirits) and motor vehicle fuel at an existing service station/convenience market with a State Alcoholic Beverage Control (ABC) License Type 21 (Off-Sale General). Current hours of operation are 24 hours, 7 days a week.
2. A finding of Public Convenience or Necessity (PC or N) in conjunction with a premise-to-premise transfer of an existing ABC License from within the City to allow the sales of alcoholic beverages at the proposed location.

Senior Planner Mel Lee presented the staff report and mentioned the applicant was concerned with Condition of Approval No. 11 – requirement of a roving security patrol.

PUBLIC COMMENTS

Ken Barton from the Fiedler Group was representing Thrifty, the property owner. Mr. Barton stated they were seeking a conditional use permit to allow for the transfer of the license as well as a public convenience or necessity finding. Per staff's recommendation, one license was being transferred from one location to another less than 600 feet from an existing store. Mr. Barton added they had

reviewed the conditions of approval and were in agreement with them with the exception of Condition of Approval No. 11.

Bruce Evans, ABC Legal Consultant, provided background information and gave a slide presentation that highlighted the surveillance monitoring system used by Thrifty in their 47 locations. In lieu of the roving security patrol, Mr. Evans proposed amending Condition of Approval No. 11 to state "applicant to provide a contract to the satisfaction of the Development Services Department indicating the private security company hired to respond to the site if needed". Another alternative was giving the business the opportunity to prove it could operate under the proposed conditions by adding a 1-year review into the conditional use permit, the cost of which the applicant would incur. Mr. Evans requested additional time to work with staff if the Commission imposed the roving security patrol requirement.

Fred Kim, Thrifty site operator, gave a brief history of their business. If given the chance they would prove to the Commission their ability to run a clean and safe business environment.

The applicant requested that the item be continued to allow them time to consider their options and propose a preferred solution to the Commission.

MOTION: Continue PA-13-08 to the Planning Commission meeting of February 24, 2014; staff to work with the applicant to develop a compromise on how to successfully operate the business. Moved by Vice-Chair Dickson, second by Chair Fitzpatrick.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

2. **Application No.** CO-13-04
Site Address: Citywide
Zone: City of Costa Mesa
Project Planner: Minoo Ashabi
Environmental Determination: Exempt

Description:

Code Amendment CO-13-04 to amend the Zoning Code for new regulations related to small lot subdivisions. Amendments are proposed, but not limited to, the following Code Sections in Title 13 (Zoning Code) of the Costa Mesa Municipal Code:

- Chapter I – Add new definitions related to small lot subdivisions;
- Chapter IV, Table 13-30 (Land Use Matrix) – Allowing small lot subdivisions of up to 15 dwelling units in multiple family residential zones; and,
- Chapter V, Article 2.5 – add new development standards for small lot subdivisions.

Environmental Determination: Exempt.

Principal Planner Minoo Ashabi summarized the staff report pertaining to the small lot subdivision ordinance.

The Commission discussed 10-foot setbacks at great length. Commissioner McCarthy stated the advantage of the Small Lot Subdivision Ordinance was to allow flexibility in the standards and obtain good products.

MOTION: Based on the evidence of the record that the Planning Commission recommend to the City Council approval of Code Amendment CO-13-04 (Small Lot Ordinance) based on discussed setback revisions (setbacks shall be 10-foot standard; staff will have the ability to lower the setback to 5-foot based on the location and site-specific circumstances without the need for a variance). Moved by Commissioner McCarthy, second by Vice-Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

Ms. Ashabi said the matter would be set for the March 4, 2014 Council Meeting.

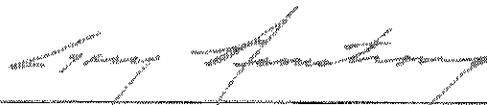
STAFF COMMENTS

City Engineer Fariba Fazeli announced a neighborhood meeting on Wednesday, January 29th at Kaiser Elementary from 6-7:30 p.m. to discuss the East 19th Street traffic project. Ms. Fazeli also reported that construction work was scheduled to begin in March on 17th Street between Tustin and Irvine due to widening and raising of the median.

Interim Assistant Director Jerry Guarracino announced the Joint Council-Planning Commission Study Session scheduled for Tuesday, January 28th at 4:30 p.m. in the Emergency Operations Center (EOC) regarding land use alternatives.

ADJOURNMENT: NEXT PLANNING COMMISSION MEETING AT 6:00 P.M. ON MONDAY, FEBRUARY 10, 2014.

Submitted by:



CLAIRE FLYNN, SECRETARY
COSTA MESA PLANNING COMMISSION

March 3, 2014

The Honorable Jim Righeimer
Mayor
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626



**Orange County
Chapter**

Building Industry Association
of Southern California

17744 Sky Park Circle
Suite 170
Irvine, California 92614
949.553.9500
fax 949.769.8943
www.biaoc.com

**Re: Support for Public Hearing Item #1 Zoning Code Amendment CO-13-04
"Small Lot Ordinance"**

Dear Mayor Righeimer,

On behalf of our membership, I would like to express our support of the proposed small lot development ordinance as recommended by the Planning Commission. Small lot development represents an important new land use tool to help meet market demand in established communities. It also comports with regional housing policy and stimulates the local economy. For many individuals and families, small lot communities represent a cost attainable home-ownership opportunity.

The Building Industry Association of Southern California, Orange County Chapter (BIA/OC) is a non-profit trade association of over 1,000 companies employing over 100,000 people affiliated with the home building industry. The Orange County Chapter represents the largest member base within BIA Southern California. Our mission is to champion housing as the foundation of vibrant and sustainable communities.

Economic Benefits of New Home Construction

New housing will have immediate and long-term positive effects on the City of Costa Mesa. The economic benefits include quality jobs, government revenue, and economic stimulus.

In an annual study of 100 metropolitan markets, the National Association of Home Builders found that three jobs and over \$90,000 in government revenue are initially generated by every home built.¹ Orange County added the largest number of construction jobs in the nation by employing 11,200 people.² Small lot development is a growing product type that will lead to further job creation.

¹ The Local Impact of Home Building in a Typical Metro Area. National Association of Home Builders.
<https://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=35601&subContentID=219188>

² O.C.'s boom for building jobs. Orange County Register.
<<http://www.oregister.com/lansner/percent-601110-jobs-construction.html>>

PRESIDENT
DONNA KELLY
LENNAR

VICE PRESIDENT
JOAN MARCUS-COLVIN
THE NEW HOME COMPANY

TREASURER
JIM YATES
RANCHO MISSION VIEJO

SECRETARY
MIKE GARTLAN
KB HOME

IMMEDIATE PAST PRESIDENT
DAVE BULLOCH
STANDARD PACIFIC HOMES

TRADE CONTRACTOR COUNCIL V.P.
ALAN BOUDREAU
BOUDREAU PIPELINE CORPORATION

ASSOCIATE VICE PRESIDENT
MARK HIMMELSTEIN
NEWMAYER & DILLION, LLP

MEMBER-AT-LARGE
BRIAN GEIS

MEMBER-AT-LARGE
MIKE WINTER
SARES-REGIS GROUP

CHIEF EXECUTIVE OFFICER
MICHAEL BALSAMO

On average, over three-fifths of a household's income is spent in the local economy. In a hypothetical situation where 50 homes are built in Costa Mesa with the new Small Lot Ordinance, approximately \$2.0 million will be spent at local businesses and over \$157,000 will be generated in sales tax annually.³

By providing tools to redevelop underutilized and under-performing properties, the City's Small Lot Ordinance would help foster economic development and infrastructure improvement that contributes directly to the quality of life of Costa Mesa residents.

Meeting Population Growth and Housing Need

The Southern California Association of Governments (SCAG) projects Orange County's population growth to be 432,000 new residents over the next 20 to 25 years.⁴ Presently, there is a housing shortage in Orange County. Home prices have appreciated 21% in one year. The combination of population growth and limited supply will continue to complicate the challenge of housing accessibility and affordability for the City and the region. For this reason, regional housing policy under Senate Bill 375 supports the practice of infill development. Small lot development represents one of many housing strategies that the City may use to address demand for ownership housing, revitalize areas, and fulfill a fair share of regional housing goals.

For these reasons, we respectfully request that City Council approve the Small Lot Ordinance. We commend the City for the extensive outreach and research on how small lot development can benefit the community of Costa Mesa. We believe the proposed ordinance will streamline planning and building processes, and establish guidelines for homes to integrate with the community fabric. As always, we remain a resource to the City on important issues that are related to the well-being of our local communities. Thank you for your time and thoughtful consideration.

Sincerely,



Michael Balsamo
Chief Executive Officer

Cc: City Council
Mr. Gary Armstrong, Deputy CEO
Ms. Claire Flynn, Asst. Dev. Services Director
Ms. Mino Ashabi, Principal Planner

³ Based on a median income of \$65,373 for City of Costa Mesa

⁴ Southern California Association of Governments. Regional Forecast Appendix.

<http://rtpscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP_GrowthForecast.pdf>

From: R. Godwin

Sent: Tuesday, March 04, 2014 11:43 AM

To: RIGHEIMER, JIM; MENSINGER, STEPHEN; LEECE, WENDY; GENIS, SANDRA; MONAHAN, GARY

Subject: Regarding Small-Lot Subdivision Ordinance and Open Space

Dear Mayor, Mayor Pro Tem, and Council Members:

I'm writing to express my strong opposition to the Small-Lot Subdivision Ordinance.

It appears that the primary goal of the ordinance is to allow for more crowded development than is currently permitted on small lot sizes. While I recognize that the ordinance does not technically increase density, it will increase the perception of density by the decrease in open space. Current requirements result in structures that are fairly close together as it is, and I'm not excited about any attempt to make these requirements less stringent. The council agenda report states: "While these standards have been practical for larger developments; they have been challenging for smaller subdivisions." If the current regulations serve to discourage intense development of small lots, I'm in favor of keeping them.

Also, it seems that this ordinance would increase the possibility that developers will purchase existing single-family homes and raze them, in order to build more profitable multi-unit developments. More profitable for their builders, perhaps, but not for residents' quality of life.

As Costa Mesa looks to update its general plan, I'm concerned that city leadership is unintentionally taking steps that will, over time, result in congested streets and crowded, light-blocking buildings. Between recently proposed sports fields and other additions to Fairview Park, various multi-story projects going up around the city (e.g. 1901 Newport, near my home), and proposed changes like the Small-Lot Subdivision Ordinance, I'm concerned that Costa Mesa is swapping its laid-back, suburban feel for an increasingly closed-in atmosphere.

As a 20-something Millennial, I feel like my generation is often used as a handy excuse for increasing the size and density of new construction while reducing green space. We're cited as the reasons behind live/work spaces, smaller yards, and other features that allow for more housing units per square inch.

This Millennial? I want to live in a city with plenty of green space - and *open* space. For me, "open space" doesn't mean a square of green grass huddled between tall buildings, and perhaps a decorative tree. It means parks, and green things throughout the city, and being able to look up and see open sky, not a row of fourth-story condo windows and a sliver of blue if I tilt my head back far enough.

I'm also concerned that the extra density is being foisted off on Westside residents, who already lack the number of immediately accessible parks and open spaces available to those in Mesa Verde and the Eastside. For instance, I live directly opposite Lions Park, which is constantly being put to good use by residents. Unfortunately, it also attracts a

large number of homeless people, leaving parents and children with a less safe and less spacious play area. There aren't many other places for people to experience the great outdoors within walking distance; they require the use of a car, or a longish walk or bike ride (not always feasible for small children). I'm fortunate enough to have a car, so I'm easily able to enjoy the natural spaces at Fairview, Canyon, the beach, and elsewhere. Not everyone is so lucky. While I'm thrilled that Costa Mesa has the amenities that it does, they're not adequate to offset the effects of a major density increase.

I've lived in Costa Mesa for over 20 years. For me, the question is: will the Costa Mesa of 2024 or 2034 be a city in which I'll want to rent, live, or buy a home? With the city's apparent desire for more tall buildings, more traffic, and less room in which to live a healthy lifestyle, I'm afraid that the answer may be "no". I'd much rather it be "yes", and would appreciate your taking these points into consideration as you help decide the future of Costa Mesa.

Sincerely,
Rachael Godwin