City Planning Commission Draft: Proposed Mello Act Ordinance

ORDINANCE NO. _____

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

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

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

    a. Promote consistency with the implementation of the provisions of the Mello Act (Government Code Section 65590 and 65590.1).

    b. Ensure the preservation and maintenance of existing Residential Units, both affordable and market rate, unless a residential use is no longer feasible at that location.

    c. Protect units occupied by Very Low, Low, and Moderate Income persons or households by ensuring the replacement of those units occur on a one-for-one basis, with an affordability level equaling like-for-like, or lower.

    d. Require new residential projects of a certain size to provide Inclusionary Units for Very Low, Low and Moderate Income persons or households.

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

    a. Where other entitlements and/or regulations require the provision of affordable units to be replaced or additionally provided as a part of the project, those regulations that result in the greatest number of affordable units with the deepest affordability levels per unit shall prevail.

    b. Fees calculated, charged, or collected based on residential use, to provide for affordable units, shall comply with the provisions contained herein. Those fees charged based upon non-residential use, to provide for affordable dwellings, shall be unaffected by the provisions contained herein.

    c. In the case of conflict between this Section H and any applicable Specific Plan, certified Local Coastal Program, or other State or local

regulation, the requirements that result in the greatest number of Affordable Replacement Units and Inclusionary Units, with the deepest affordability levels per unit, shall prevail.

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

Affordable Housing Incentives Guidelines. The guidelines adopted by the City Planning Commission on June 24, 2005, as amended, pursuant to Ordinance No. 170,764, that implement California Government Code Section 65915 in the City of Los Angeles.

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

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

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

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

Coastal-Related Non-Residential Use. As defined in Section 30101 of the Public Resources Code, or "coastal related," as defined in Section 30101.3 of the Public Resources Code, any non-residential development or use that is dependent on a Coastal-Dependent Non-Residential Use.

Coastal Zone. The Coastal Zone, as defined in California Public Resources Code, Division 20 (commencing with Section 30000).

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

Coastal Zone Community. As established by the Coastal Act of 1976, those portions of the Brentwood-Pacific Palisades, Venice, Palms-Mar Vista-Del Rey, Westchester-Playa del Rey, San Pedro, and Wilmington-Harbor City Community Plan areas that are located within the Coastal Zone. These Coastal Zone areas are aggregated into the following Communities: Pacific Palisades (a portion of the Brentwood-Pacific Palisades Coastal Zone areas); Venice (a portion of the Venice, Palms-Mar Vista-Del Rey, and Westchester-Playa del Rey Coastal Zone areas); San Pedro (a portion of the San Pedro Coastal Zone areas), and Wilmington (a portion of the Wilmington-Harbor City Coastal Zone areas.

Conversion. A change of one or more existing Residential Units to a condominium, cooperative, or similar form of ownership; or a change of one or more existing Residential Units to a non-residential use; or a reduction in the existing number of Residential Units, either affordable, (covenanted or determined affordable by a Mello Determination) or market rate.

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

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

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

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

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

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

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

Major Remodel. A project that increases the existing structure by more than 50 percent of existing floor area within a residential structure.

New Housing Development. Development of one or more Residential Units, for rent or sale, through either construction of new units, additions to existing structures, or the adaptive reuse of existing, non-residential structures for Residential Units. The structure or structures containing these Residential Units are located on a single lot, two or more contiguous or tied lots, or conform to the definition of a Unified Development per LAMC 12.24 W 19.

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

Residential Unit. An efficiency dwelling unit, accessory dwelling unit, junior accessory dwelling unit, light housekeeping unit or joint living and work quarters as defined in Section 12.03 of the Los Angeles Municipal Code; a mobile home, as defined in Section 18008 of the California Health and Safety Code; a mobile home lot in a mobile home park as defined in Section 18214 of the California Health and Safety Code; a residential hotel (inclusive of individual rooms within a residential hotel) as defined in

paragraph (1) or subdivision (b) of Section 50519 of the California Health and Safety Code.

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

Serial Development. Development that is undertaken by the same applicant on the subject property and within a 5-year time period, for which a Mello Act compliance review was required in the past and is presently required in conjunction with a proposed project. This also includes permit requests for multiple projects that, when combined, are considered a Demolition via the definition in this section.

Unified Development. As defined in LAMC 12.24 W 19(c), a development of two or more Residential Units, buildings and/or structures that have functional internal linkages such as shared pedestrian walkways or vehicular connections or parking facilities, with common architectural and landscape features that constitute distinctive design elements of the development, and that appears to be a consolidated whole when viewed from adjoining streets or the public right-of-way. Such development may include two or more contiguous parcels or lots separated only by a street or alley. Detached bungalows and duplexes are considered unified developments.

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

    a. **Demolition of a Structure declared as a Public Nuisance**. The Demolition of a residential structure or unit that has been declared a public nuisance pursuant to Division 13 (commencing with Section 17000) of the California Health and Safety Code or Chapter IX, Article 1, Division 89 of the Los Angeles Municipal Code is not subject to the Affordable Replacement Unit requirements of this Section H. In order to qualify for this exception, the following must be taken into consideration:

        1. A certified title report indicating that a public nuisance declaration has been recorded against the residential unit or structure and has not been terminated.

2. No building that conforms to the standards that were applicable at the time the building was constructed and that does not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Los Angeles Building Code for new construction.

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

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

5. **General Provisions.** Projects in the Coastal Zone shall comply with the following provisions:
   a. **Conversion or Demolition.** Projects resulting in the Conversion or Demolition of existing Residential Units, shall comply with the following provisions:

1. **Conversion or Demolition of an existing Residential Unit to a non-Residential unit**. Conversion or Demolition of any existing Residential Unit, for purposes of a non-residential unit that is not Coastal-Dependent, is prohibited, unless a residential unit is no longer feasible. Conversion of a Residential Unit to an Apartment Hotel will constitute a Conversion to a non-residential unit and is not permitted. The Department of City Planning shall determine feasibility based on the review of Substantial Evidence.

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

        i. Proximity to other existing, viable residential uses provides strong evidence that a residential use is feasible.

        ii. Applicant-initiated zone changes, or a lapse in non-conforming rights resulting in a prohibition of residential use of the property shall not render a project infeasible. If an applicant currently has non-conforming or other rights that permit a continued residential use, the Applicant may not argue that the existing zoning renders a residential use infeasible.

        iii. Site Zoning and Land Use Designations of the, along with current non-conforming rights afforded the property shall be considered when determining feasibility. Adjacent zoning, that may be incompatible with a residential use shall also be considered.

        iv. Condition of the Unit will be assessed when determining feasibility. Units that are dilapidated or in a state of disrepair due to failure to make reasonable repairs or to adequately maintain the site shall not be considered infeasible.

v. Ability of the Applicant to rent or sell the current premises based on the site's unique characteristics or circumstances.

vi. Feasibility will be determined based on the characteristics and circumstances of the property, including proximity to noxious and incompatible existing uses that are likely to remain and cause an inability to rent or sell the current premises.

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

   a) **Affordable Units located within a single-family dwelling and duplex.** Affordable Units located within a single-family dwelling or duplex on a lot containing no more than two Residential Units shall be replaced if it is feasible to do so as determined by the process set forth in subsections 8 and 9 of this Ordinance. Replacement may consist of the construction of an Affordable Replacement Unit or payment into the Coastal Zone Affordable Housing Trust Fund.

   b) **Affordable Units located in Multi Family Properties containing 3 or more units**. All Affordable Units located within the same structure, on the same property, or within a Unified Development or Serial Development, which contain three or more Residential Units, shall be replaced on a one-for-one basis with an Affordable Replacement Unit, provided that the density conforms with the existing regulations.

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

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

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

3. **Location**. All Affordable Replacement Units shall be provided onsite where the Conversion or Demolition of the existing unit occurred.

4. **Timing**. Replacement Affordable Units will be made available for occupancy at the same time as market-rate Residential Units in the Project are available or within three years of the date upon which work commenced on the Conversion or Demolition, whichever occurs first.

5. **Tenants Rights**. HCIDLA will establish and maintain a program for tenants who will be displaced as a result of any proposed Demolition or Conversion so that such tenants can exercise a "Right of Return" to the Affordable Replacement Units that are required pursuant to the regulations set forth in this Ordinance.

6. **Right of First Return Criteria.** Replacement Units must initially be offered to displaced tenants with income levels determined to be in the Extremely Low, Very Low, Low and Moderate category. The following Right of First Return Criteria applies to the Replacement unit:

    a) **Tenant Displacement.** Tenants must have been displaced from the demolished or converted Residential Unit that necessitated the Affordable Replacement Unit.

    b) **Refusal of Replacement Unit.** Should displaced tenants refuse the Affordable Replacement Unit, it may be made available for rent to a new tenant.

    c) **HCIDLA Notification.** HCIDLA will notify impacted tenants of their rights and advise them to provide

HCIDLA with income verification and updated contact information.

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

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

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

    d) A minimum of 40 percent of the proposed Residential Units reserved on-site for Moderate Income Households.

2. **Timing**. Inclusionary Units will be made available for occupancy at the same time as market-rate Residential Units in the same Project.

3. **Amount Required**. The number of required Inclusionary Residential Units is based on a percentage of the net new Residential Units proposed, not including any required Affordable Replacement Units or other restricted Residential Units also required to be provided on-site.

4. **Fractional Inclusionary Residential Units**. A fractional Inclusionary Residential Unit of 0.5 or more will be rounded up to the next whole unit and will be provided on-site. If a project results in a Fractional Inclusionary Residential Unit of less than 0.5, a proportional partial unit fee will be required

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

5. **Fee**. The fractional Inclusionary Residential Unit fee will be calculated by the average square-footage of all dwelling units proposed within the new development, multiplied by the following per square-foot fee for the type of proposed development:
    (a). Single-Family Detached: $48.63/square-foot
    (b). Single-Family Attached: $42.36/square-foot
    (c). Multi-Family Rental: $73.88/square-foot
    (d). Multi-Family Condominium: $64.30/square-foot

6. **Fee Adjustment**. HCIDLA will adjust these fees annually, along with changes to the Linkage Fee, starting with a base year of 2016, utilizing changes in construction costs as measured by a regularly published industry Construction Cost Index and in land costs as measured by the change in median condominium sales prices. Construction cost percentage change will be weighted at 70% and land costs will be weighted at 30%. The annually updated fees will be published in the Mello Act Implementing Guidelines.

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

8. **Serial Development.** When development is undertaken by the same applicant on the subject property and within a 5-year time period, for which a Mello Act compliance review was required in the past and is presently required in conjunction with a proposed project, the development shall be considered a Serial Development. In this case development within a five year period will be analyzed together as a single project for the purpose of Mello Act compliance review. The analysis may result in the requirement of Affordable Replacement or Inclusionary Units which were previously not required in prior project approvals but required as a result of the aggregate project.

9. **Affordable Housing Incentives**. Affordable Replacement Units and Inclusionary Units required to be provided through Mello Act compliance review may be counted toward a project's overall provision of affordable dwellings when applying for affordable housing development incentives, pursuant to LAMC Section 12.22 A.25 or any other affordable housing development incentive program.

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

    a. **Number of existing Affordable Units.** HCIDLA has sole responsibility for determining: (1) Whether an existing Residential Unit is an Affordable Unit and (2) the level of affordability of that Residential Unit. HCIDLA will make this determination based on the information provided by the applicant at the time of application filing with the Department of City Planning.

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

        1. Income documentation of tenants, detailing affordability level of the unit for the previous 5 years. If no documents are available, the unit will be presumed affordable to Very Low Income Households.

        2. The number of existing Affordable Residential Units subject to the Rent Stabilization Ordinance (beginning with Section 151 of the Los Angeles Municipal Code), currently or within the last 5 years.

        3. The issuance of notices to vacate and/or Evictions, within the five years preceding the HCIDLA Mello Act Compliance Assessment.

        4. The number of persons or families of Extremely Low, Very Low, Low, or Moderate income and their receipt of Notices to Vacate or evictions from a single residential development within five years prior to the filing of an application for a

Mello Act Compliance Review to convert or demolish the structure.

5. The number of Residential Units that can be shown to have been vacant for more than the 5 years preceding the filing of an application for a Mello Act Compliance Review. These units will not be considered affordable.

6. Current Residential Units that are owner-occupied for one year or more will not be determined to be an Affordable Unit. Only one dwelling unit within an existing multi-family structure shall be determined to be owner-occupied.

b. **Feasibility Study.** Should the Project Applicant request a feasibility study to determine feasibility of providing a required Affordable Replacement Unit, the Applicant shall submit a request for a Feasibility Study to HCIDLA. The Feasibility study shall comply with the Feasibility Study Methodology found in Subsection 8 of this Ordinance.

1. An applicant claiming infeasibility is responsible for paying a fee to HCIDLA or the consultant. HCIDLA will either use this fee to hire or will require the applicant to hire the consultant, from an approved list of neutral third party consultants, to undertake a feasibility study. This feasibility study will utilize the methodology described in Subsection 8 and the thresholds and the Mello Act Implementing Guidelines, described in subsection 11 of this Ordinance. HCIDLA will review the completed study and make a determination regarding the maximum number of Replacement and Inclusionary Residential Units the project can accommodate based on the study. Applicants may not submit their own feasibility studies for consideration.

2. The City presumes that all Replacement Units and Inclusionary Units are feasible. It is the applicant's responsibility to prove infeasibility. A Feasibility Study will only be considered when an applicant disagrees with the HCIDLA Mello Act Assessment, and only under the following two circumstances:

a) Replacement of Affordable Residential Units that are located in a single family dwelling or an attached duplex, located on a site containing no more than two residential units. Detached bungalows and

detached duplexes will be considered unified developments for the purposes of this Subdivision and will not be eligible for findings of infeasibility.

b) Reduction in the number of Inclusionary Units because the Applicant claims that full compliance is not feasible, the Applicant may request a reduction in the number of required Inclusionary Units. Applicants cannot pay in lieu fees for whole units nor may they seek to construct Inclusionary Units off-site. If an applicant claims that it is not feasible to comply with the Inclusionary Unit obligations of Subsection 5c of this Ordinance, the Applicant may only request a reduction in the number of required Inclusionary Units.

3. HCIDLA will transmit to the Director of Planning a copy of the Feasibility Study, AHPP (if applicable), HCIDLA's Mello Act Compliance Assessment Memorandum as to the maximum number of required Affordable Replacement Units and/or Inclusionary Residential Units that can be feasibly provided on-site. Should there be any Replacement Residential Unit fees or fractional Inclusionary Residential unit fees, those will be included in HCIDLA's determination as well.

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

The AHPP shall contain the following:

1. Description. A description of whether the Required Affordable Units (Replacement and Inclusionary Units) will be provided as net new units, through new construction or adaptive reuse of an existing non-residential structure.

a. A description of the required Affordable Units, including the number and type of bedrooms, minimum square-footage, and parking.

b. A description of how the new development will also comply with all of the applicable sections of the approved Affordable Housing Incentive Guidelines, as amended.
c. A description of how new development will also comply with all applicable Development Standards for required Affordable Replacement and Inclusionary Residential Units, as outlined below.

2. **Development Standards**. A description of how the applicant will comply with the following standards for required Affordable Replacement and Inclusionary Residential Units.

   a. **Comparable Unit**. Restricted residential units will be comparable in every manner to market-rate units, except in the quality of interior finish materials for walls, ceilings, floors and other interior surfaces of buildings. The restricted unit(s) will be comparable in total square footage, number of bedrooms, bedroom size, closet space and amenities. If the project proposes more than one type of unit, the restricted dwelling unit(s) will not be confined to only one type of unit within the development.

   b. **Affordable Replacement Units.** Restricted residential units will contain at least the same number of bedrooms as the existing Affordable Units they are replacing.

   c. **Inclusionary Residential Units**. The design of the restricted unit(s) should generally reflect the average number of bedrooms and bathrooms per residential unit in the development and should proportionally reflect the mix of unit types in the development.

   d. **Location of Units**. Restricted units must be interspersed among market-rate residential units within the same building. They may not be grouped together on one level or in less desirable sections of the building. In multiple building developments, restricted residential units must be reasonably dispersed among the buildings.

e. **Equal Distribution of Amenities.** Residents of Replacement Units and Inclusionary units may not be charged for amenities that are provided at no cost to other market-rate residents including, but not limited to, access to recreational facilities, parking, internet and interior amenities. Optional services provided must be an option for all residents, and available to all under the same terms and conditions. All incentives must be offered to all new residents, not only residents of market-rate residential units.

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

7. **Feasibility Study.** Should the Project Applicant request a feasibility study to determine feasibility of providing a required Affordable Replacement Unit, the Applicant shall submit a request for a Feasibility Study to HCIDLA. The Feasibility study shall comply with the Feasibility Study Methodology found in Subsection 8 of this Ordinance.

a. An applicant claiming infeasibility is responsible for paying a fee to HCIDLA or the consultant prior to the commencement of the study. HCIDLA will either use this fee to hire or will require the applicant to hire a consultant, from an approved list of neutral third party consultants, to undertake a feasibility study. The consultant will be managed by HCID. This feasibility study will utilize the methodology described in Subsection 8 and the thresholds and the Mello Act Implementing Guidelines, described in subsection 11 of this Ordinance. HCIDLA will review the completed study and make a determination regarding the maximum number of Replacement and Inclusionary Residential Units the project can accommodate based on the study. Applicants may not submit their own feasibility studies for consideration.

b. The City presumes that all Replacement Units and Inclusionary Units are feasible. It is the applicant's responsibility to prove infeasibility. A Feasibility Study will only be considered when an applicant disagrees with the HCIDLA Mello Act Assessment, and only under the following two circumstances:

1. Replacement of Affordable Residential Units that are located in a single family dwelling or an attached duplex, located on a site containing no more than two residential units. Detached bungalows and detached duplexes will be considered unified developments for the purposes of this Subdivision and will not be eligible for findings of infeasibility.

2. Reduction in the number of Inclusionary Units because the Applicant claims that full compliance is not feasible, the Applicant may request a reduction in the number of required Inclusionary Units. Applicants cannot pay in lieu fees for whole units nor may they seek to construct Inclusionary Units off-site. If an applicant claims that it is not feasible to comply with the Inclusionary Unit obligations of Subsection 5c of this Ordinance, the Applicant may only request a reduction in the number of required Inclusionary Units.

c. HCIDLA will transmit to the Director of Planning a copy of the Feasibility Study, HCIDLA's Mello Act Compliance Assessment Memorandum as to the maximum number of required Affordable Replacement Units and/or Inclusionary Residential Units that can be feasibly provided on-site. Should there be any Replacement Residential Unit fees or fractional Inclusionary Residential unit fees, those will be included in HCIDLA's determination as well.

8. **Feasibility Determination Methodology.** The following methodology will be utilized for the purposes of HCID to determine a project's feasibility of providing Affordable Replacement Units or Inclusionary Units.

a. **Reputable Published Data**. Reputable published data sources for the following will be identified and included in the Mello Act Implementing Guidelines and may include research including construction cost, Class A apartment building operating cost, median monthly rental rate, home and condominium sale prices, and going-in cap rate.

b. **Assumptions regarding Affordability**. The following assumptions apply to the data utilized in the Feasibility Study.

1. Construction costs should be no more than the per square-foot construction cost compiled and published by a reputable construction cost estimator, in accordance with the relevant building typologies, as adjusted for the Los Angeles location within the last 12 months.

2. Soft development costs, including but not limited to permits and fees, architecture and engineering, financing fees and interest carry, and developer fee, should not exceed 25 percent of the construction costs.

3. Land cost should be the actual purchase price for the property bought within three years from the time of the feasibility study being conducted, as reflected in the purchase contract. For earlier land purchases, the land cost value should be determined by a reputable, professional land appraiser commissioned by HCIDLA, at the expense of the applicant.

c. **Feasibility of Residential Units for Rent or Lease**. Feasibility will be determined by yield-on-cost: annual net operating income divided by total development cost. The threshold for determining feasibility will be the going-in cap rate percentage index for new apartments in the Los Angeles region, as published in the most recent issue of a regularly published reputable real estate industry report. If a project meets or exceeds the going-in cap rate, including required Affordable Units, providing the Affordable Residential Unit(s) is/are feasible.

1. Operating expenses should not be more than the expense data collected and regularly published within a reputable residential income property industry report for the Los Angeles area within the last 12 months.

2. Rental income should not be less than rental data collected and produced by a reputable real estate data collection and analysis firm for buildings less than 5 years old, within one quarter mile of the project site, and within the last 12 months. If no comparable data is available, data for buildings with an age greater than 5 years may be utilized.

3. Sales revenue should be not less than the sales data for buildings less than 5 years old, within one-quarter mile of the project site, and within the last 12 months. If no comparable data is available, data for buildings with an age greater than 5 years may be utilized.

d. **Mixed Use projects**. Mixed use projects containing residential and non-residential uses will be evaluated by deducting the portions of costs and

revenues for the non-residential uses so that only the residential portion of the project is considered in the feasibility analysis. .

e. **Alternative to Comparable Data**. If no appropriate and comparable data is available from an appropriate data source, HCIDLA will commission, at the applicant's expense, a survey and/or analysis to acquire and assess the necessary data.

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

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

    b. **Determination**.

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

        2. **Time to Act.** The Director will make a written determination within 75 days of the application having been deemed complete; a complete application includes having received the HCIDLA Mello Act Assessment Memorandum. This time limit may be extended by mutual consent of the Director and the Applicant.

        3. **HCIDLA Mello Act Assessment Memorandum.** The applicant shall file an application for an HCIDLA Mello Act Assessment for the Demolition or Conversion of existing Residential Units.

        4. **Standards for Review**. The Director will grant a Mello Act Compliance Review upon written findings that the project complies with the provisions of this Ordinance.

        5. **Limitations**. Granting of a Mello Act Compliance Review will not imply compliance with any other applicable provisions of

the Los Angeles Municipal Code, which require additional land use entitlement.

6. **Transmittal**. The Director will transmit by mail a copy of the written findings and decision to the applicant; property owner; all owners of properties abutting, across the street for alley from, or having a common corner with the property; all tenants and occupants of the involved property; the Department of Building and Safety; the Los Angeles Housing and Community Investment Department; the Councilmember(s) having jurisdiction over the area in which the property is located; Empower LA, The Department of Neighborhood Empowerment and other parties who have requested in writing a copy of the determination.

7. **Appeals**. Except as required below, the appeals process and procedures for Mello Act Compliance Review determinations will be as indicated in Section 11.5.7.C.6 or Section 12.36 for quasi-judicial projects requiring multiple approvals.

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

    b) **Appellate Decision**.

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

Type of Notice	Time	Where / To Whom / Additional Requirements
Mail	21 days	• The applicant; • The owner(s) of the property involved; • All tenants and units in the property at issue; • Owners and Occupants of properties within 100 feet radius of the exterior boundaries of the property involved;

		• The Councilmember(s) having jurisdiction over the specific plan area in which the property is located; and • Other parties who have requested notice in writing.

ii. **Time to Act.** The Area Planning Commission will act within 75 days after the expiration of the appeal period.

iii. **Findings**. The appeal action must contain the same findings required to be made by the Director, supported by facts in the record.

iv. **Authority**. The Area Planning Commission may sustain, reverse, or modify, in whole or in part, the decision of the Director.

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

10. **Relief**. No administrative, ministerial or additional discretionary action may be taken to relax, deviate, or relieve an applicant from compliance with the provisions of this Ordinance, except as otherwise stated herein.

11. **Mello Act Implementing Guidelines**. The Los Angeles Housing and Community Investment Department (HCIDLA) will develop and maintain implementing guidelines for these regulations within 6 months of the effective date of these regulations. The guidelines will be approved by the General Manager of the Los Angeles Housing and Community Investment Department and the Director of the Department of City Planning.

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

12. **Enforcement and Monitoring.** The following shall constitute methods the City will utilize in enforcing and monitoring compliance with the Mello Act

Replacement Units and Inclusionary Residential Units produced as an outcome of the Mello Coastal Act.

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

    1. Covenant shall restate Affordability level and shall be observed for a minimum of 55 years from the issuance of the Certificate of Occupancy; and

    2. Compliance with the City's annual housing and occupancy monitoring requirements as set forth in these regulations, Mello Act Implementing Guidelines, and the Affordable Housing Incentive Guidelines, will be recorded with the County Recorder's Office after HCIDLA approval of the Affordable Housing Provision Plan.

    1. The applicant shall submit a fee payment at the time of submission of the covenant and agreement application to HCID, pursuant to Section 19.14 of the Los Angeles Municipal Code, to HCIDLA.

b. **Financial Assurances**. HCIDLA, or any successor department or agency, may require that the project proponent post a bond or make other financial assurances to assure compliance with the approved AHPP. If a bond or other financial assurance is required, such will be made prior to final approval of the AHPP.

    1. It is the responsibility of the property owner to notify HCIDLA of any changes in the building that may affect compliance, such as change of ownership, management agent or on-site manager, vacancies in restricted dwelling units, or changes in compliance with the performance standards approved by HCIDLA.

    2. Violations of the regulatory agreement will be levied against the building owner for non-compliance including legal proceedings. It is the responsibility of the owner to adhere to all program requirements.

    3. HCIDLA will conduct annual monitoring of all Affordable Replacement Units and Inclusionary Units to ensure that they continue to be available at an Affordable Monthly

Housing Cost and occupied by Extremely Low, Very Low, Low, and Moderate Income Households. The City's monitoring procedures may include a requirement that owners of Affordable Replacement Units and Inclusionary Units submit tenant income information to the City that has been verified by third party sources, and that meets the same standards for income verification as specified in the Mello Act Implementing Guidelines described in subsection 11 of this Ordinance.

c. **Request for Injunction.** Tenants, rental applicants, purchasers, and prospective purchasers of Affordable Replacement Units may seek an injunction to enforce the affordability criteria or to raise the affordability criteria.

SECTION 2 A new Chapter 187 is added to Division 5 of the Administrative Code to read as follows:

Chapter 187

Coastal Zone Affordable Housing Trust Fund

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

(a) There is hereby created and established within the Treasury of the City of Los Angeles a special fund to be known as the "Coastal Zone Affordable Housing Trust Fund" (the "Fund").

(b) The purpose of the Fund shall be the receipt, retention and disbursement of in-lieu fees collected by the City pursuant to Section12.21.H. of the Los Angeles Municipal Code. The Fund shall be used for the development of new affordable dwelling units in the Coastal Zone portions of the City.

(c) The Los Angeles Housing and Community Investment Department shall administer the Fund in accordance with Los Angeles Municipal Code Section 12.21.H. and established City practices for administering trust funds.

d) The Los Angeles Housing and Community Investment Department shall collect In-Lieu Fees required to be collected and deposited into the Fund pursuant to Los Angeles Municipal Code Section 12.21.H and remit all such fees/funds to the Treasurer for deposit into the Fund.

(e) Fees collected from projects are to be deposited in sub accounts corresponding to their location as follows: Pacific Palisades (a portion of the Brentwood-Pacific Palisades Coastal Zone areas); Venice (a portion of the Venice, Palms-Mar Vista-Del Rey, and Westchester-Playa del Rey Coastal Zone areas); San Pedro (a portion of the San Pedro Coastal Zone areas), and Wilmington (a portion of of the Wilmington-Harbor City Coastal Zone areas).

(f) All monies from the Fund shall be expended for the purposes set forth, and subject to the provisions and limitations expressed in Los Angeles Municipal Code Section 12.21.H. Expenditures shall be authorized by the Executive Manager of the Los Angeles Housing and Community Investment Department or his/her designees.

(g) Expenditures are limited to those projects that will result in the development of new affordable dwelling units within the same general location the fees were generated from; fees generated from the Palisades area can only be used for new Palisades area affordable units, fees generated from Venice-area projects can only be used for new Venice-area affordable units, and fees generated from San Pedro-area projects can only be used for new San Pedro-area affordable units.

(g) The Fund shall be interest bearing. Interest and any other earnings attributable to monies in the Fund shall be credited to the Fund and devoted to the purposes of the Fund.

(h) Monies not expended from the Fund at the close of any fiscal year shall not revert to the Reserve Fund, but shall remain in the Fund.

SECTION 3

The City Clerk shall certify to the passage of this ordinance and have it

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