



AGENDA REPORT

Meeting Date: July 2, 2013

Item Number: E-2

To: Honorable Mayor & City Council

From: Jonathan Lait, AICP, Assistant Director of Community Development
Ryan Gohlich, Senior Planner

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING SECTION 10-3-3107 OF THE MUNICIPAL CODE REGARDING DEVELOPMENT STANDARDS FOR ROOFTOP USES.

Attachments:

1. Ordinance
2. Planning Commission Resolution 1682 recommending draft ordinance; Resolution 1683 approving development plan review
3. Development Plan Review Findings
4. Project Plans

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING SECTION 10-3-3107 OF THE MUNICIPAL CODE REGARDING DEVELOPMENT STANDARDS FOR ROOFTOP USES" be introduced and read by title only.

INTRODUCTION

The City Council is asked to consider an ordinance amending existing regulations pertaining to rooftop uses on buildings located in the C-3, C-R, C-3A, and C-3B commercial zones¹. The Municipal Code currently allows the construction of certain rooftop structures (such as lunchrooms and gymnasiums) in the abovementioned zones, up to 15 feet above the otherwise applicable height limit if specific development standards are met and the Planning Commission grants approval through a Development Plan Review. The proposed ordinance would not modify the maximum height of rooftop structures that can currently be approved by the Planning Commission, but the ordinance would modify the setback requirements for unenclosed rooftop

¹ With some limited exceptions, the subject zones generally include properties within the Business Triangle, and properties along Wilshire Boulevard, South Beverly Drive, Robertson Boulevard, and La Cienega Boulevard.

structures (such as shade structures, pergolas, and trellises). Presently, enclosed and unenclosed rooftop structures may only be permitted if they are set back from the edge of the building by a minimum distance equal to the height of the rooftop structure. The ordinance would modify this provision to allow the Planning Commission to approve unenclosed rooftop structures that are not set back from the edge of the building, provided that the following findings can be made:

1. The proposed plan is consistent with the general plan and any specific plans adopted for the area.
2. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.
3. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.
4. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.
5. The proposed plan will not be detrimental to the public health, safety or general welfare.

In addition to allowing unenclosed rooftop structures, the proposed ordinance includes staff-recommended cleanup language intended to clarify that uses and structures ancillary to a rooftop lunchroom may be permitted (e.g. restrooms and outdoor areas)².

BACKGROUND

The proposed ordinance was initiated in connection with redevelopment of the commercial properties located at 9800 Wilshire Boulevard and 121 Spalding Drive. The existing building at 9800 Wilshire Boulevard is currently undergoing substantial renovations, while a brand new parking facility with office uses is currently under construction at 121 Spalding Drive. The two buildings are intended to function as a single development, and various aspects of the project have previously been reviewed by the Planning Commission, City Council, and Architectural Commission.

Planning Commission Review

The Planning Commission has previously reviewed and approved various components of the ongoing development at 9800 Wilshire Boulevard and 121 Spalding Drive. In particular, the Planning Commission approved construction of the new parking facility with office uses located at 121 Spalding Drive, and more recently approved the construction of a rooftop lunchroom and unoccupied architectural features on the rooftop of the two buildings. While approval of the lunchroom is currently permitted by the Municipal Code, approval of portions of the unoccupied architectural features are contingent on the City Council's approval of the subject ordinance. In reviewing the subject architectural features and ordinance, the Planning Commission weighed the benefits and drawbacks of allowing such features, and considered whether such an allowance would be a beneficial addition to the Municipal Code. As a result of this deliberation, the Planning Commission required that an additional finding relating to mass and scale be incorporated into the Municipal Code for approval of unoccupied architectural features, and imposed a variety of conditions on the subject project to ensure that the development will be a

² City policy has been to allow uses and structures ancillary to rooftop lunchrooms; however, such provisions are not explicitly stated in the code. Therefore, staff seeks to clarify this provision to align with City policies.

harmonious addition to the surrounding neighborhood. The items considered by the Planning Commission are further detailed in the Analysis section of this report, and based on this information the Planning Commission unanimously adopted a resolution recommending adoption of the Zone Text Amendment.

City Council Review

In 2012 the City Council reviewed a minor realignment and widening of the alley that bisects the properties located at 9800 Wilshire Boulevard and 121 Spalding Drive. In addition, the City Council reviewed requests to encroach into the alley with subterranean and above-grade elements of the project. The encroachments consisted of subterranean parking, and an elevated bridge (to connect the two properties) and architectural elements located more than 30 feet above the alley. The City Council expressed their support for the improvements proposed at the subject properties, and unanimously approved the alley realignment and widening, as well as the above and below grade encroachments into the alley. Since that time, the applicant filed the request for the Zone Text Amendment that is now before the City Council for consideration.

Architectural Commission Review

The Architectural Commission has reviewed both structures associated with the subject development, inclusive of the rooftop architectural features. The Architectural Commission was supportive of the unique design, and indicated that the project would be an improvement to the surrounding neighborhood. At the conclusion of its review, the Architectural Commission unanimously approved the exterior design of the buildings located at 9800 Wilshire Boulevard and 121 Spalding Drive, with the rooftop architectural features being contingent on the City Council's approval of the Zone Text Amendment.

EXISTING PROVISIONS FOR ROOFTOP STRUCTURES

The City's Municipal Code contains a variety of provisions for rooftop structures in commercial zones. Depending on the type and location of rooftop structures, certain rooftop structures may be permitted by right, or may require review by the Planning Commission. Rooftop structures that are currently permitted to exceed otherwise allowable height limitations are set forth as follows:

- **Vent Pipes** – May exceed height limitations in order to comply with Building Code requirements. (No discretionary review required)
- **Chimneys** – May exceed height limitations in order to comply with Building Code requirements. (No discretionary review required)
- **Elevator Shafts, Lobbies, and Associated Equipment** – May exceed height limitations by up to 15 feet. (No discretionary review required)
- **Stair Shafts** – May exceed height limitations by up to 15 feet. (No discretionary review required)
- **Mechanical Equipment** – May exceed height limitations by up to 15 feet. (No discretionary review required)
- **Parapets** – May exceed height limitations by up to 45 inches. (No discretionary review required)
- **Unoccupied Architectural Features** – This includes skylights, clerestories, pergolas, trellises, and other similar features. Such features may exceed height limitations by up to 15 feet provided they are set back from the edge of the roof by a distance equal to the structure's height. (No discretionary review required)

- **Antennas** – May exceed height limitations by up to 15 feet. (No discretionary review required)
- **Satellite Dishes** – May exceed height limitations by up to 15 feet. (No discretionary review required)
- **Unoccupied Architectural Features in the C-5 Commercial Zone** – This includes skylights, clerestories, pergolas, trellises, and other similar features. Such features may exceed height limitations by up to 15 feet and are not required to be set back from the edge of the roof by a distance equal to the structure’s height. (Planning Commission review required)
- **Rooftop Gymnasiums** – May exceed height limitations by up to 15 feet, and must be set back from the edge of the roof by a distance equal to the height of the rooftop gymnasium. (Planning Commission review required)
- **Rooftop Lunchrooms** – May exceed height limitations by up to 15 feet, and must be set back from the edge of the roof by a distance equal to the height of the rooftop lunchroom. (Planning Commission review required)
- **Rooftop Uses in Business Triangle** – Any rooftop use in the Business Triangle may exceed height limitations by up to 15 feet, provided the rooftop use is set back from building edges facing a public right-of-way by a distance equal to the height of the rooftop use. Furthermore, rooftop uses shall not include office, storage, or restaurant uses. (Planning Commission review required)

Except for in the C-5 commercial zone, no provision exists that allows the construction of architectural features without a setback from the building’s edge. In the C-5 commercial zone, architectural features without a setback may be approved by the Planning Commission. The proposed ordinance would establish a similar procedure for most commercial properties not zoned C-5, except that the proposed ordinance is limited to unenclosed architectural features, whereas the provisions in the C-5 zone allow enclosed or unenclosed architectural features.

ORDINANCE DETAILS

Below is a strikeout/underline version of the proposed text changes, which identifies the discrete changes to existing code language. The new text dealing with lunchrooms is staff recommended and is intended to clean up provisions pertaining to ancillary uses associated with lunchrooms, while the new text dealing with occupancy restrictions for employees only has been recommended by the Planning Commission to allow greater flexibility for rooftop uses reviewed by the Planning Commission. The new text dealing with unenclosed architectural features has been proposed by the applicant to accommodate their proposed project at 9800 Wilshire Boulevard and 121 Spalding Drive, and would also be applicable in most commercial zones.

10-3-3107: ROOFTOP USES:

- A. *Notwithstanding any provisions to the contrary contained in this title, the planning commission may permit, pursuant to the development plan review procedure contained in this article and subject to the restrictions set forth in this subsection, development in the C-3, C-R, C-3A, and C-3B zones to exceed height, story and density limitations otherwise applicable to the development in order to permit, on the rooftop, the establishment of ~~rooftop~~ gymnasiums ~~and/or~~ lunchrooms; structures or uses ancillary to lunchrooms; and, unenclosed architectural features that are not otherwise excluded from the definition of “height of building” in section 10-3-100 of this chapter, provided that:*

1. *The planning commission makes the findings set forth in section 10-3-3104 of this chapter regarding the rooftop use.³*
2. *The additional height above the maximum height limit otherwise applicable to the development will not exceed fifteen feet (15'). Furthermore, in no event shall the distance between the floor and ceiling of the gymnasium or lunchroom and structures or uses ancillary to such lunchroom exceed fifteen feet (15').*
3. *The total floor area of the development shall not exceed the maximum allowable floor area otherwise applicable to the development by more than three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.*
4. *No food service, other than vending machines, shall be provided in connection with the rooftop use.*
5. *The subject structure provides not less than the minimum number of parking spaces required by this section as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.*
6. *Unless authorized by the Planning Commission as part of the Development Plan Review, only persons who work in the building or are registered hotel guests will be permitted to use the rooftop facilities.*
7. *No admittance or use fees shall be charged for the use of the rooftop facilities.*
8. *The additional structure permitted pursuant to this article shall be set back from the property line or from the required setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.*
9. *Notwithstanding the provisions of subsection A8 of this section, ~~the~~ unenclosed architectural features approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall if the Planning Commission finds that such features are architecturally compatible with the building and will not adversely impact the building's scale and massing. In addition, any other additional structure approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall provided that the exterior wall of the additional structure permitted is constructed in the same plane as the exterior wall of the floor below and the additional structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty five inches (45").*

³ The findings for a Development Plan Review (Section 10-3-3104) are set forth in Attachment 3 of this report.

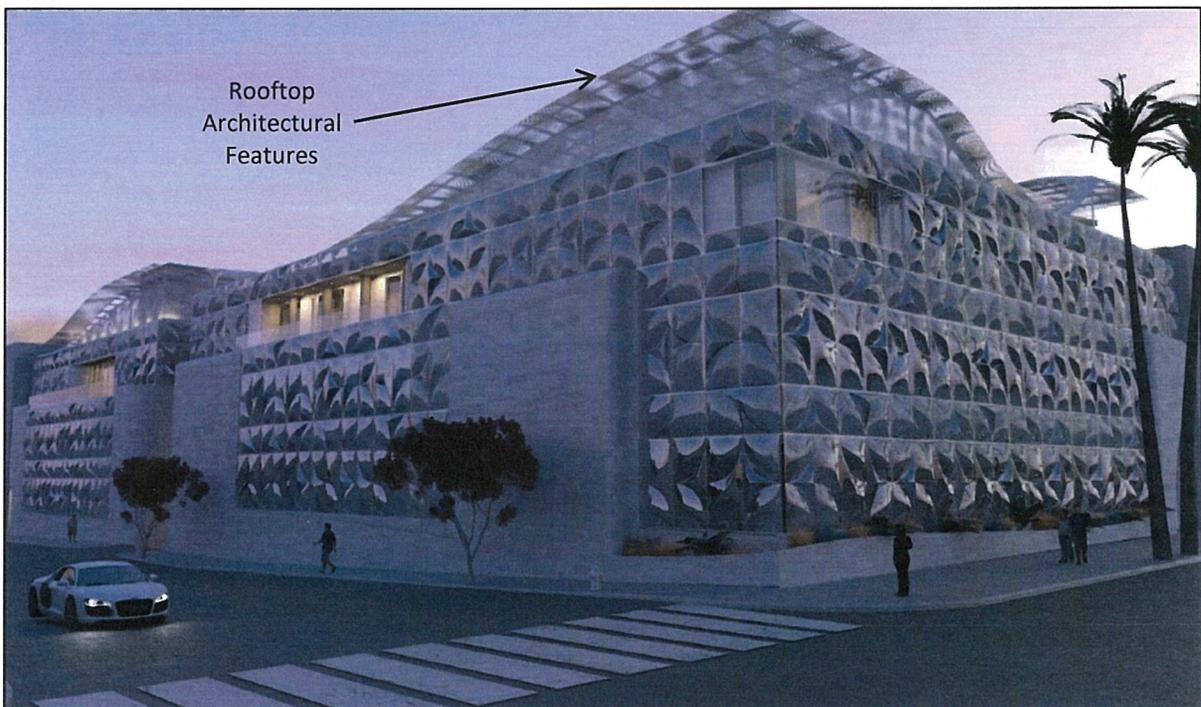
10. Notwithstanding the provisions in the definition of "height of building" in section 10-3-100 of this chapter permitting certain elements to be located above maximum height limits, only those elements required by law to project above the roof deck shall be permitted to exceed the fifteen foot (15') height limit of the structure enclosing the rooftop use permitted hereby.

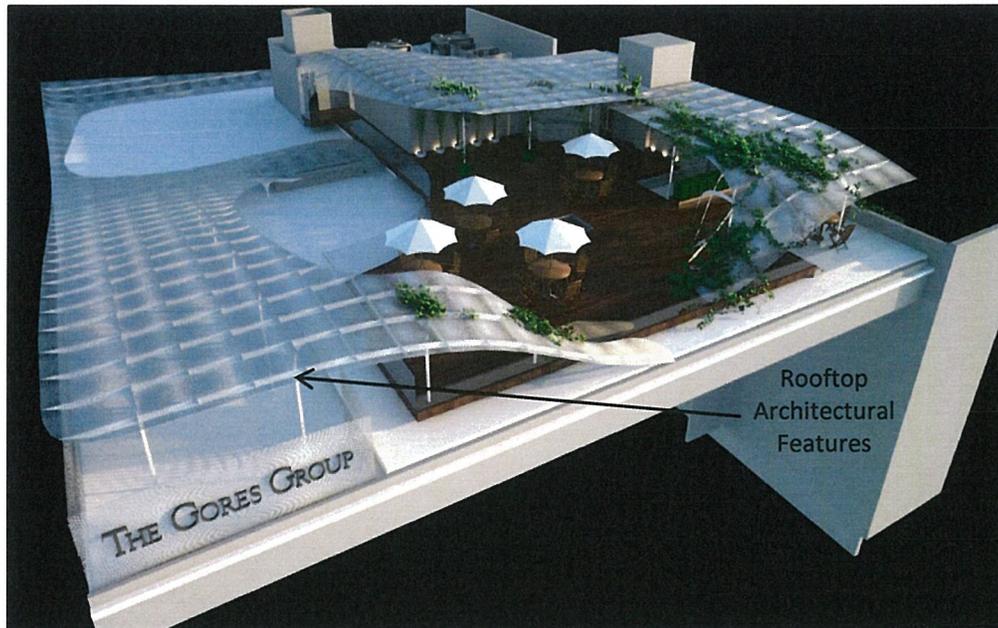
ANALYSIS

The findings for a Zone Text Amendment relate to the amendment's impact on the public interest and general welfare. The following benefits and concerns were considered by the Planning Commission and are presented for consideration by the City Council in reviewing the proposed amendment.

Benefits

Improved Aesthetics and Variety. If appropriately designed, unenclosed architectural features can help to provide an aesthetically interesting finish to a building's rooftop edges without significantly increasing the appearance of mass. Furthermore, many building rooftops are visible from taller buildings throughout the city, with most buildings having unfinished rooftops occupied only by mechanical equipment. Providing options at the rooftop level may encourage developers to utilize high-quality design and materials at the rooftop, which provides for improved aesthetics as viewed from surrounding properties. The following images show the proposed rooftop design presented by the applicant for the subject project, and serve as an example of the types of structures that could be built with the proposed ordinance.





Planning Commission Review Required. The proposed amendment would modify existing code provisions by allowing unenclosed architectural features to be constructed on a rooftop without being set back from the building's edge, but only if approved by the Planning Commission pursuant to a Development Plan Review. Furthermore, specific findings must be made to approve a Development Plan Review, and an additional finding that "*such features are architecturally compatible with the building and will not adversely impact the building's scale and massing*" has been included in the amendment. The findings provide the Planning Commission with the necessary tools to ensure that unenclosed architectural features are appropriately designed and scaled to compliment the building and surrounding neighborhood without resulting in adverse impacts.

Activation of Outdoor Space. Undeveloped rooftops can be found on many commercial buildings throughout the City, and such undeveloped rooftops do not contribute to the vitality of the City's commercial districts. Allowing improved design and function of rooftop areas will help to activate outdoor areas within commercial zones, which may help to encourage a more vibrant, urban environment.

Code Cleanup. While the proposed ordinance is applicant driven, staff has incorporated changes intended to cleanup and clarify existing provisions related to rooftop uses. Specifically, staff has incorporated language that would allow rooftop lunchrooms with ancillary uses such as restrooms and outdoor areas. Such ancillary uses are currently allowed by matter of policy, but staff wishes to codify this policy so that future applicants will have a clear understanding of rooftop provisions. This will help with project processing, and may encourage higher quality design of rooftop areas.

Concerns

Additional Massing. The maximum allowed building height in most of the City’s commercial zones is 45 feet (measured to the finished roof deck), and the addition of an up to 15-foot tall unenclosed architectural feature could have the possibility of adding to the appearance of building massing since such a structure could be constructed in-line with the primary building façade. However, this concern is mitigated by required findings that provide safeguards to ensure that rooftop architectural features are appropriately designed.

Neighborhood Compatibility. The proposed amendment may promote the creation of more usable rooftop areas on commercial buildings, which would likely encourage increased rooftop use by employees of commercial buildings. Increased use of rooftop areas could create additional noise and add to the presence of individuals located outside a building. Despite these changes that may result, it is anticipated that most rooftop activity would occur during daytime hours since the rooftop areas are restricted to use by employees only unless otherwise authorized by the Planning Commission. Ambient noise levels are higher during daytime hours, and the limited noise associated with an employee rooftop use is not expected to result in detrimental impacts. Furthermore, conditions of approval that restrict rooftop hours can be imposed on projects by the Planning Commission through the Development Plan Review process. Finally, a finished rooftop that is appropriately designed with employee amenities will generally be more aesthetically pleasing than an unfinished rooftop, and could actually improve the neighborhood fabric.

Privacy. As discussed above, the proposed amendment will likely encourage increased rooftop activity at commercial buildings. Increased rooftop activity leads to more individuals being outside, and the potential for privacy impacts to result when a building is located adjacent to a residential area. If not properly regulated, a rooftop area could be designed to give individuals access to the edge of a building’s rooftop, thereby increasing the likelihood that a neighbors’ privacy may be impacted. Although staff has some concerns regarding the privacy of residential properties, the Development Plan Review findings specifically require that, for rooftop uses, *“the nature, configuration, location, density, height, and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.”* This finding would allow for conditions to be imposed on a rooftop use, such as setbacks, landscaping buffers, and other similar methods that could be used to prevent privacy impacts on residential properties, and each request for a Development Plan Review would be reviewed by the Planning Commission to ensure that no impacts would result.

ENVIRONMENTAL ASSESSMENT

The Amendment has been reviewed pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City’s Local CEQA guidelines. Pursuant to the State CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations from CEQA’s requirements, the ordinance qualifies for a Class 5 Categorical Exemption because the ordinance would not result in any changes in land use, density, or building height.

FINDINGS

Based on the analysis outlined above and the findings adopted by the Planning Commission, staff recommends that the following findings be made in support of the requested Zone Text Amendment:

1. *The Zone Text Amendment will result in a benefit to the public interest, health, safety, morals, peace, comfort, convenience, or general welfare.*

The Zone Text Amendment is intended to add flexibility to the Code for rooftop uses on commercial buildings. With Planning Commission approval, rooftop uses are currently a permitted use in commercial areas, but the current standards limit the quality of architecture and employee amenities that can be provided on a building rooftop. The proposed amendment will allow for improved architectural design, improved rooftop amenities for employees of commercial buildings, will contribute to the overall quality of commercial buildings within the City, and will help to retain and attract high-quality commercial tenants. Any application for a rooftop use requires a Development Plan Review, which would be reviewed by the Planning Commission on a case-by-case basis, and findings would need to be made based on the merits of each application. Because the amendment provides opportunities for improved architectural design and building amenities, the amendment serves to benefit the public interest, health, safety, morals, peace, comfort, convenience, and general welfare of both the business and residential communities.

FISCAL IMPACT

The proposed Zone Text Amendment will not result in any financial impacts.

PUBLIC NOTICE

A public hearing notice was mailed on June 20, 2013 to all owners and residential occupants of property located within 300 feet of the project site, and notice of the hearing was published in the Beverly Hills Courier and the Beverly Hills Weekly, two newspapers of local circulation, prior to the hearing.

RECOMMENDED ACTION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled “AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING SECTION 10-3-3107 OF THE MUNICIPAL CODE REGARDING DEVELOPMENT STANDARDS FOR ROOFTOP USES” be introduced and read by title only.

Susan Healy Keene, AICP
Director of Community Development


Approved By _____

ATTACHMENT 1

ORDINANCE

ORDINANCE NO. 13-O-

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING SECTION 10-3-3107 OF THE MUNICIPAL CODE
REGARDING DEVELOPMENT STANDARDS FOR ROOFTOP
USES.

WHEREAS, on March 14, 2013 the Planning Commission conducted a duly noticed public hearing to consider a proposed amendment to the development standards for rooftop uses approved pursuant to a Development Plan Review as set forth in the Beverly Hills Municipal Code and recommended that the City Council approve the proposed amendment.

WHEREAS, on July 2, 2013, the City Council conducted a duly noticed public hearing to consider proposed amendments to the development standards for rooftop uses approved pursuant to a Development Plan Review and introduced the Ordinance.

WHEREAS, the City Council hereby finds and concludes that the Amendment has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City’s Local CEQA Guidelines (hereafter the “Guidelines”), and that the project is exempt from CEQA pursuant to the Class 5 Categorical Exemption (Section 15305 of the Guidelines) which exempts minor alterations in land use limitations from CEQA’s requirements. The Class 5 exemption is applicable because the ordinance would not result in any changes in land use, density, or building height. Further, any approval of a Development Plan Review for rooftop uses is subject to discretionary review and analysis on a case-by-case basis by the Planning Commission.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BEVERLY HILLS
DOES ORDAIN AS FOLLOWS:

Section 1. Subsection A of Section 10-3-3107 (Rooftop Uses) of Article 31 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows with all other portions of Section 10-3-3107 remaining in effect without amendment:

“10-3-3107: ROOFTOP USES:

A. Notwithstanding any provisions to the contrary contained in this title, the planning commission may permit, pursuant to the development plan review procedure contained in this article and subject to the restrictions set forth in this subsection, development in the C-3, C-R, C-3A, and C-3B zones to exceed height, story and density limitations otherwise applicable to the development in order to permit the establishment of rooftop (i) gymnasiums, (ii) lunchrooms and structures or uses ancillary to such lunchrooms, and (iii) unenclosed architectural features that are not otherwise excluded from the definition of “height of building” in section 10-3-100 of this chapter, provided that as to any such rooftop structures or uses:

1. The planning commission makes the findings set forth in section 10-3-3104 of this chapter regarding the rooftop use.
2. The additional height above the maximum height limit otherwise applicable to the development will not exceed fifteen feet (15’).

Furthermore, in no event shall the distance between the floor and ceiling of the gymnasium or lunchroom and structures or uses ancillary to such lunchroom exceed fifteen feet (15').

3. The total floor area of the development shall not exceed the maximum allowable floor area otherwise applicable to the development by more than three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.
4. No food service, other than vending machines, shall be provided in connection with the rooftop use.
5. The subject structure provides not less than the minimum number of parking spaces required by this section as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.
6. Unless authorized by the Planning Commission as part of the Development Plan Review, only persons who work in the building or are registered hotel guests will be permitted to use the rooftop facilities.
7. No admittance or use fees shall be charged for the use of the rooftop facilities.
8. The additional structure permitted pursuant to this article shall be set back from the property line or from the required setback line immediately

adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.

9. Notwithstanding the provisions of subsection A8 of this section, unenclosed architectural features approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall if the Planning Commission finds that such features are architecturally compatible with the building and will not adversely impact the building's scale and massing. In addition, any other additional structure approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall provided that the exterior wall of the additional structure permitted is constructed in the same plane as the exterior wall of the floor below and the additional structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty five inches (45").
10. Notwithstanding the provisions in the definition of "height of building" in section 10-3-100 of this chapter permitting certain elements to be located above maximum height limits, only those elements required by law to project above the roof deck shall be permitted to exceed the fifteen foot (15') height limit of the structure enclosing the rooftop use permitted hereby.

Section 2. The City Council hereby approves this Ordinance and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 3. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.”

Section 4. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

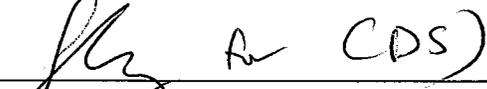
JOHN A. MIRISCH
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

(SEAL)

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



SUSAN HEALY KEENE
Director of Community Development

ATTACHMENT 2

PLANNING COMMISSION RESOLUTIONS

RESOLUTION NO. 1682

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING ADOPTION OF AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING DEVELOPMENT STANDARDS FOR ROOFTOP USES APPROVED PURSUANT TO A DEVELOPMENT PLAN REVIEW.

WHEREAS, the Planning Commission has considered the proposed amendment to the City of Beverly Hills Municipal Code, as set forth and attached hereto as Exhibit A and more fully described below (the “Amendments”); and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on March 14, 2013, at which time it received oral and documentary evidence relative to the proposed Amendments; and

WHEREAS, the Planning Commission finds that the proposed Amendment is required for the public health, safety, and general welfare, and that such Amendment is consistent with the general objectives, principles, and standards of the General Plan;

NOW, THEREFORE, the Planning Commission of the City of Beverly Hills does resolve as follows:

Section 1. The Amendment has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14,

Sections 15000, et seq.), and the City's Local CEQA Guidelines (hereafter the "Guidelines"), and a Class 5 Categorical Exemption has been issued in accordance with the requirements of Section 15305 of the Guidelines to allow minor alterations in land use limitations. The Class 5 exemption is applicable because the ordinance would not result in any changes in land use, density, or building height. Further, any approval of a Development Plan Review for rooftop uses is subject to discretionary review and analysis on a case-by-case basis by the Planning Commission.

Section 2. The Planning Commission does hereby find that the Zone Text Amendment is intended to add flexibility to the Code for rooftop uses on commercial buildings. With Planning Commission approval, rooftop uses are currently a permitted use in commercial areas, but the current standards limit the quality of architecture and employee amenities that can be provided on a building rooftop. The proposed Amendment will allow for improved architectural design, improved rooftop amenities for employees of commercial buildings, will contribute to the overall quality of commercial buildings within the City, and will help to retain and attract high-quality commercial tenants. Any application for a rooftop use requires a Development Plan Review, which is reviewed by the Planning Commission on a case-by-case basis, and findings need to be made based on the merits of each application. Because the Amendment provides opportunities for improved architectural design and building amenities, the amendment serves to benefit the public interest, health, safety, morals, peace, comfort, convenience, and general welfare of both the business and residential communities.

Section 3. The Planning Commission does hereby recommend to the City Council the adoption of an ordinance approving and enacting the proposed Amendment

substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 4. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: March 14, 2013



Craig Corman
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner

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USES.

WHEREAS, on March 14, 2013 the Planning Commission conducted a duly noticed public hearing to consider a proposed amendment to the development standards for rooftop uses approved pursuant to a Development Plan Review as set forth in the Beverly Hills Municipal Code and recommended that the City Council approve the proposed amendment.

WHEREAS, on July 2, 2013, the City Council conducted a duly noticed public hearing to consider proposed amendments to the development standards for rooftop uses approved pursuant to a Development Plan Review and introduced the Ordinance.

WHEREAS, the City Council hereby finds and concludes that the Amendment has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City’s Local CEQA Guidelines (hereafter the “Guidelines”), and that the project is exempt from CEQA pursuant to the Class 5 Categorical Exemption (Section 15305 of the Guidelines) which exempts minor alterations in land use limitations from CEQA’s requirements. The Class 5 exemption is applicable because the ordinance would not result in any changes in land use, density, or

building height. Further, any approval of a Development Plan Review for rooftop uses is subject to discretionary review and analysis on a case-by-case basis by the Planning Commission.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BEVERLY HILLS
DOES ORDAIN AS FOLLOWS:

Section 1. Subsection A of Section 10-3-3107 (Rooftop Uses) of Article 31 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows with all other portions of Section 10-3-3107 remaining in effect without amendment:

“10-3-3107: ROOFTOP USES:

- A. Notwithstanding any provisions to the contrary contained in this title, the planning commission may permit, pursuant to the development plan review procedure contained in this article and subject to the restrictions set forth in this subsection, development in the C-3, C-R, C-3A, and C-3B zones to exceed height, story and density limitations otherwise applicable to the development in order to permit, on the rooftop, the establishment of gymnasiums; lunchrooms; structures or uses ancillary to lunchrooms; and, unenclosed architectural features that are not otherwise excluded from the definition of “height of building” in section 10-3-100 of this chapter, provided that:

1. The planning commission makes the findings set forth in section 10-3-3104 of this chapter regarding the rooftop use.

2. The additional height above the maximum height limit otherwise applicable to the development will not exceed fifteen feet (15'). Furthermore, in no event shall the distance between the floor and ceiling of the gymnasium or lunchroom and structures or uses ancillary to such lunchroom exceed fifteen feet (15').
3. The total floor area of the development shall not exceed the maximum allowable floor area otherwise applicable to the development by more than three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.
4. No food service, other than vending machines, shall be provided in connection with the rooftop use.
5. The subject structure provides not less than the minimum number of parking spaces required by this section as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.
6. Unless authorized by the Planning Commission as part of the Development Plan Review, only persons who work in the building or are registered hotel guests will be permitted to use the rooftop facilities.
7. No admittance or use fees shall be charged for the use of the rooftop facilities.

8. The additional structure permitted pursuant to this article shall be set back from the property line or from the required setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.
9. Notwithstanding the provisions of subsection A8 of this section, unenclosed architectural features approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall if the Planning Commission finds that such features are architecturally compatible with the building and will not adversely impact the building's scale and massing. In addition, any other additional structure approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall provided that the exterior wall of the additional structure permitted is constructed in the same plane as the exterior wall of the floor below and the additional structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty five inches (45").
10. Notwithstanding the provisions in the definition of "height of building" in section 10-3-100 of this chapter permitting certain elements to be located above maximum height limits, only those elements required by law to project above the roof deck shall be permitted to exceed the fifteen foot (15') height limit of the structure enclosing the rooftop use permitted hereby.

Section 2. The City Council hereby approves this Ordinance and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 3. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.”

Section 4. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

JOHN MIRISCH
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

SUSAN HEALY KEENE
Director of Community Development

RESOLUTION NO. 1683

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A DEVELOPMENT PLAN REVIEW TO ALLOW ROOFTOP STRUCTURES AND USES ON THE BUILDINGS LOCATED AT 9800 WILSHIRE BOULEVARD AND 121 SPALDING DRIVE (THE GORES GROUP).

The Planning Commission of the City of Beverly Hills hereby finds, resolves and determines as follows:

Section 1. Tom Levyn, applicant on behalf of The Gores Group (collectively the “Applicant”), has submitted an application to allow the establishment of rooftop structures and uses on the commercial buildings located at 9800 Wilshire Boulevard and 121 Spalding Drive, which requires the issuance of a Development Plan Review (DPR) by the Planning Commission.

Section 2. The Project consists of the construction and establishment of rooftop structures and uses on the properties located at 9800 Wilshire Boulevard and 121 Spalding Drive. The rooftop structures consist of unenclosed architectural elements, and amenities associated with a rooftop employee lunch area. The unenclosed architectural features are intended to provide an aesthetic finish to the perimeter edges of the buildings, and create shaded outdoor areas for employees of the building to take breaks and/or eat lunch. These unenclosed architectural elements vary in height, with a maximum height of approximately 11 feet above the adjacent roof deck, and would occupy a total area of approximately 6,316 square feet between the two buildings, which amounts to approximately 25% of the overall roof area.

The other proposed amenities associated with the rooftop employee area include approximately 500 square feet of restroom facilities, moveable tables and chairs, radiant heaters, a counter and sink combination, and rooftop decking. Approval of some of the structures and uses described above requires a Zone Text Amendment, which has been requested in conjunction with the project. The request for a Zone Text Amendment is separately addressed by Planning Commission Resolution No. 1682.

Section 3. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City’s Local CEQA Guidelines (hereafter the “Guidelines”), and a Class 1 Categorical Exemption has been issued in accordance with the requirements of Sections 15301 of the Guidelines for the Project. The Class 1 exemption is applicable because the Project results in minor exterior additions to two commercial buildings, and is therefore exempt from further review under the provisions of CEQA.

Section 4. Notice of the Project and public hearing was published in two newspapers of local circulation on March 1, 2013 and March 7, 2013, and on March 4, 2013 a mailed notice was sent to all property owners and residential tenants within a 300-foot radius of the property, and to all owners of single-family properties within a 500-foot radius of the property. On March 14, 2013, the Planning Commission considered the application at a duly noticed public meeting. Evidence, both written and oral, was presented at said meeting.

Section 5. In considering the request for a Development Plan Review for rooftop uses, the Planning Commission considered whether it could make the following findings:

1. The proposed plan is consistent with the general plan and any specific plans adopted for the area.
2. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.
3. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.
4. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.
5. The proposed plan will not be detrimental to the public health, safety or general welfare.
6. The unenclosed architectural features are architecturally compatible with the building and will not adversely impact the building's scale and massing.

Section 6. Based on the foregoing, the Planning Commission hereby finds and determines as follows:

1. As conditioned, the Project promotes high-quality commercial development and is consistent with the goals and policies set forth in the General Plan. The Project is not located within any specific plan areas.

2. The Project enhances the quality of the subject properties, which contributes positively to existing and anticipated development in the vicinity of the Project site. The Project is designed in a manner that preserves the privacy of surrounding properties, and creates improved rooftop employee amenities that will promote harmonious development of the area.

3. The proposed rooftop uses are designed in a manner that enhances building aesthetics while preserving the privacy of surrounding residential properties. Furthermore, the nearest residential properties are located a minimum of 130 feet from the rooftop uses, and are separated from the rooftop uses either by other commercial buildings or a public street. Based on the Project's design and the distance to the nearest residential properties, the Project will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.

4. For these reasons, the Project will not generate any vehicle trips beyond those already attributable to the commercial buildings, and will therefore not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.

5. The proposed rooftop uses and structures are appropriately designed to preserve privacy, reduce the appearance of mass, and enhance the architectural quality of the subject commercial buildings. The improvements will

contribute positively to the public health, safety, and general welfare by creating architectural diversity that enhances the surrounding neighborhood and improves the rooftop amenities available to employees of the subject commercial buildings.

6. The unenclosed architectural features have been designed in a manner that compliments the architectural styling of the building. Furthermore, the architectural features utilize an open design that varies in height. Due to the open nature and varying heights of the architectural features, they will not adversely impact the building's scale and massing.

Section 7. Based on the foregoing, the Planning Commission hereby grants the requested Development Plan Review, subject to the following conditions:

1. This approval shall not become effective unless and until the proposed Zone Text Amendment regarding rooftop uses has been adopted by the City Council and has taken effect.

2. All alley encroachments shall be subject to separate review and approval by the City Council.

3. Unless otherwise approved herein, all conditions of approval set forth in Planning Commission Resolution No. 1647 and City Council Resolution No. 12-R-12890 shall remain in full force and effect.

4. With the exception of maintenance activities, rooftop access shall be prohibited within 30 feet of the south property line of the building located at 121 Spalding Drive.

5. The outdoor rooftop areas shall be restricted to use only by employees of the commercial building between the hours of 7:00 AM and 10:00 PM daily. Additionally, guests of the commercial building shall be permitted to occupy the rooftop areas between the hours of 7:00 AM and 7:00 PM daily. Notwithstanding the preceding restrictions, this condition shall not prohibit the Applicant from hosting occasional events on the rooftop later than 10:00 PM for employees, and later than 7:00 PM for guests of the commercial building, provided that the Applicant submits written notice to the Director of Community Development at least 24 hours in advance of the event, notifying the Director of the date, time, and type of event to be conducted. In the event that the Director of Community Development determines that the type or frequency of events is resulting in unanticipated impacts, the Director shall have the authority to impose additional conditions on the use of the outdoor rooftop areas, and may, at his/her discretion, schedule a public hearing before the Planning Commission to assess the impacts and impose additional conditions.

6. Exterior lighting intended to illuminate the rooftop areas or structures shall be subject to Architectural Review. The Director of Community Development or his/her designee shall serve as the reviewing authority for any such exterior lighting request, and may, at his/her discretion, forward requests to the Architectural Commission for consideration.

7. APPEAL. Decisions of the Planning Commission may be appealed to the City Council within fourteen (14) days of the Planning Commission action by filing a written appeal with the City Clerk. Appeal forms are available in

the City Clerk's office. Decisions involving subdivision maps must be appealed within ten (10) days of the Planning Commission Action. An appeal fee is required.

8. RECORDATION. The resolution approving the Development Plan Review for rooftop uses shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of the resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Project shall be **null and void and of no further effect**. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60 day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the Project.

9. EXPIRATION. Development Plan Review: The exercise of rights granted in such approval shall be commenced within three (3) years after the adoption of such resolution.

10. VIOLATION OF CONDITIONS: A violation of any of these conditions of approval may result in a termination of the entitlements granted herein.

11. This approval is for those plans submitted to the Planning Commission on March 14, 2013, a copy of which shall be maintained in the files of the City Planning Division. Project development shall be consistent with such plans, except as otherwise specified in these conditions of approval.

12. Project Plans are subject to compliance with all applicable zoning regulations, except as may be expressly modified herein. Project plans shall be subject to a complete Code Compliance review when building plans are submitted for plan check. Compliance with all applicable Municipal Code and General Plan Policies is required prior to the issuance of a building permit.

13. APPROVAL RUNS WITH LAND. These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.

14. Prior to the issuance of a building permit, all applicable Park and Recreation Facilities Tax required by the Municipal Code shall be paid.

15. The Project shall operate at all times in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking or other actions.

16. The Project shall operate at all times in compliance with Municipal Code requirements for Noise Regulation.

Section 8. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: March 14, 2013



Craig Corman
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



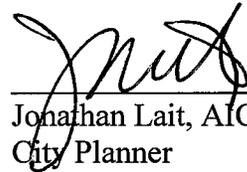
Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner

ATTACHMENT 3

DEVELOPMENT PLAN REVIEW FINDINGS

DEVELOPMENT PLAN REVIEW FINDINGS

1. The proposed plan is consistent with the general plan and any specific plans adopted for the area.
2. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.
3. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.
4. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.
5. The proposed plan will not be detrimental to the public health, safety or general welfare.