



# Planning Commission Report

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**Meeting Date:** March 14, 2013

**Subject:** **9800 Wilshire Boulevard and 121 Spalding Drive**  
**The Gores Group**

Request for a Zone Text Amendment to Beverly Hills Municipal Code Section 10-3-3107 regarding rooftop uses, and a request for a Development Plan Review to allow rooftop structures and uses on the buildings located at 9800 Wilshire Boulevard and 121 Spalding Drive.

PROJECT APPLICANT: The Gores Group

**Recommendation:** That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project;
  2. Adopt the attached resolution recommending that the City Council adopt the proposed Zone Text Amendment; and
  3. Adopt the attached resolution conditionally approving the requested Development Plan Review for rooftop structures and uses.
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## REPORT SUMMARY

The proposed project involves a requested Zone Text Amendment to certain development standards for rooftop structures and uses on commercial buildings, and a request to construct rooftop structures and uses on two buildings located at 9800 Wilshire Boulevard and 121 Spalding Drive, pursuant to the development standards set forth in the proposed Zone Text Amendment. This report analyzes the potential benefits and impacts of the proposed Zone Text Amendment, with particular focus on building massing, architectural and neighborhood compatibility, privacy, and rooftop occupancy, and also analyzes the individual rooftop structures and uses proposed on the buildings located at 9800 Wilshire Boulevard and 121 Spalding Drive. Staff's analysis concludes that the proposed Zone Text Amendment will not result in significant adverse impacts, and will instead create opportunities for improved building aesthetics and employee amenities within commercial buildings, and the recommendation in this report is for approval of the Zone Text Amendment. Further, staff's analysis of the proposed rooftop improvements on the buildings located at 9800 Wilshire Boulevard and 121 Spalding Drive concludes that these particular improvements will enhance the buildings without creating adverse impacts, and the recommendation in this report is for project approval.

**Attachment(s):**

- A. Staff Recommended Findings and Conditions of Approval
- B. Draft DPR Resolution
- C. Draft Zone Text Amendment Resolution
- D. Draft Ordinance
- E. Architectural Plans

**Report Author and Contact Information:**

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## BACKGROUND

File Date	1/24/2013
Application Complete	2/24/2013
Subdivision Deadline	N/A
CEQA Deadline	60 days from CEQA Determination
Permit Streamlining	5/14/2013 without extension request from applicant
Applicant(s)	The Gores Group
Owner(s)	The Gores Group
Representative(s)	Tom Levyn
Prior PC Action	PC Resolution No. 1647 approving new office building with parking structure at 121 Spalding Drive (7/12/2012)
Prior Council Action	CC Resolution No. 12-R-12890 approving alley realignment and alley encroachments (8/7/2012)

## PROPERTY AND NEIGHBORHOOD SETTING

### Property Information

Address	9800 Wilshire Boulevard and 121 Spalding Drive
Legal Description	Lots 652, 653, 654 and 655, Tract 7710
Zoning District	C-3
General Plan	General Commercial - Low Density
Existing Land Use(s)	General offices and medical offices
Lot Dimensions & Area	105' x 135' – 14,175 square feet (9800 Wilshire Boulevard) 100' x 117.5' – 12,240 square feet (121 Spalding Drive)
Year Built	1958
Historic Resource	The property is not listed on the City's inventory as being potentially historic.
Protected Trees/Grove	None

### Adjacent Zoning and Land Uses

North	C-3 – General commercial offices
South (across alley)	C-3 – Hotel
East	C-3 – General commercial offices
West	C-3 – General commercial

### Circulation and Parking

Adjacent Street(s)	Wilshire Boulevard and Spalding Drive
Adjacent Alleys	One-way, westbound alley located north of the property, and two-way north/south alley located west of the property
Parkways & Sidewalks	Wilshire Boulevard sidewalk/parkway – 15' from face of curb to property line Spalding Drive sidewalk/parkway – 10' from face of curb to property line
Parking Restrictions	No parking anytime on Wilshire Boulevard 1 hour metered parking adjacent to project site on Spalding Drive
Nearest Intersection	Spalding Drive and Wilshire Boulevard

Circulation Element            Wilshire Boulevard is an arterial street and Spalding Drive is a local street.  
Estimated Daily Trips        Wilshire Boulevard carries approximately 44,000 daily trips, and Spalding Drive carries approximately 2,000 daily trips.

Neighborhood Character

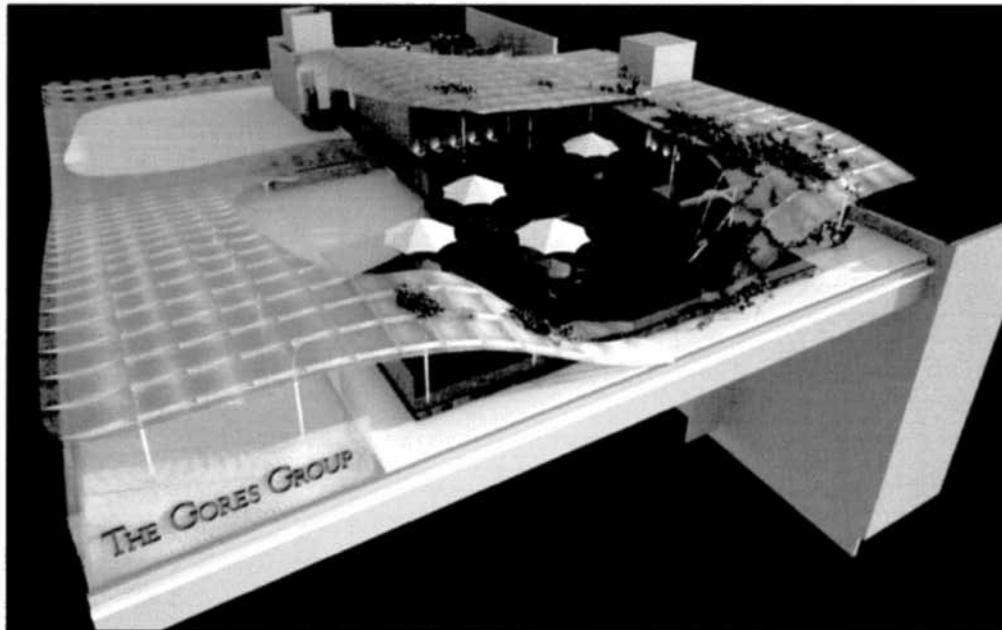
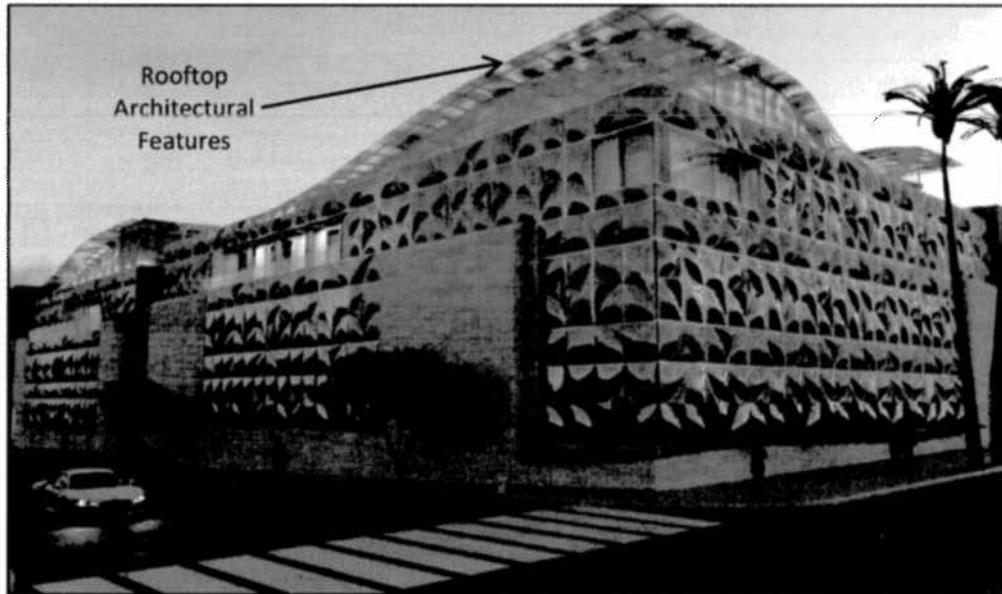
The project site is located at the Wilshire Boulevard and Spalding Drive intersection. Adjacent uses consist of a hotel and general commercial uses. Additionally, multi-family residential uses are located approximately 100 feet south of the project site.



Project Site Looking North

**PROJECT DESCRIPTION**

The proposed 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 proposed 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.



Proposed Rooftop Configuration

Requested Permits

The applicant is seeking approval of a Zone Text Amendment and Development Plan Review (DPR) for the rooftop improvements and uses described above. Pursuant to the requirements of BHMC §10-3-3107, rooftop structures and uses may be approved by the Planning Commission, provided certain standards are met. Currently, the code allows rooftop gymnasiums, lunchrooms, and architectural

features<sup>1</sup>, but does not specify whether uses ancillary to a lunchroom (e.g. restrooms and outdoor areas) may be permitted. Further, the current standards require that all such features be set back from the edge of the roof by a distance equal to the height of the rooftop structure (unless such structure is less than 45 inches in height). If approved, the amendment would clarify that uses ancillary to a rooftop lunchroom may be permitted, and would allow unenclosed architectural features, if approved by the Planning Commission, to be constructed without the edge-of-roof setback that is currently required. The requested Zone Text Amendment is set forth as follows:

**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 gymnasiums, lunch areas and structures or uses ancillary to such lunch area, 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.<sup>2</sup>*
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 lunch area and structures or uses ancillary to such lunch area 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. *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.*

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<sup>1</sup> Rooftop architectural features are governed by BHMC§10-3-100. This section would not be modified by the proposed amendment; however, provisions to allow unenclosed rooftop architectural features would be added the Development Plan Review (Rooftop Uses) portion of the code.

<sup>2</sup> The findings for a Development Plan Review (Section 10-3-3104) are set forth in Attachment A of this report.

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. 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.*

### **ZONING CODE<sup>3</sup> COMPLIANCE**

A detailed review of the proposed project to applicable zoning standards has been performed. The proposed project complies with all applicable codes, or is seeking through the requested permits, permission to deviate from certain code standards, in a manner that is consistent with the Zoning Ordinance.

#### Rooftop Uses

As proposed, the rooftop structures/uses do not comply with current codes. Consequently, the applicant requests the subject Zone Text Amendment that would cause the proposed rooftop structures/uses to comply with the Municipal Code. Specifically, the Municipal Code does not currently allow the unenclosed architectural features located along the perimeter edges of the buildings without a setback, nor does the Municipal Code specifically allow rooftop uses that are ancillary to rooftop lunchrooms (e.g. restrooms and outdoor areas).

#### Alley Encroachments

Portions of the proposed rooftop architectural features extend over the alley that separates the buildings located at 9800 Wilshire Boulevard and 121 Spalding Drive. Although these elements are located approximately 55 feet above the alley, they cannot be approved without an Encroachment Permit issued by the City Council. These elements are shown on the plans submitted by the applicant, but will be separately reviewed by the City Council.

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<sup>3</sup> Available online at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=466](http://www.sterlingcodifiers.com/codebook/index.php?book_id=466)

## GENERAL PLAN<sup>4</sup> POLICIES

The General Plan includes several goals and policies. Some policies relevant to the Planning Commission's review of the project include:

- Policy LU 2.4 Architectural and Site Design. Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.
- Policy LU 12.2 Building, Parking Structure, and Site Design. Require that buildings, parking structures, and properties in commercial and office districts be designed to assure compatibility with abutting residential neighborhoods, incorporating such elements as setbacks, transitional building heights and bulk, architectural treatment of all elevations, landscape buffers, enclosure of storage facilities, air conditioning, and other utilities, walls and fences, and non-glare external lighting.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

## ENVIRONMENTAL ASSESSMENT

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines<sup>5</sup>, and the environmental regulations of the City. The project qualifies for a categorical exemption pursuant to Section 15301 (Class 1) of the Guidelines for minor improvements/additions at the subject properties, and Section 15305 (Class 5) of the Guidelines for minor alterations in land use limitations because the ordinance would not result in any changes in land use, density, or building height. The exterior additions and minor changes in land use limitations do not result in any significant environmental impacts, and are therefore exempt from further review under the provisions of CEQA.

## PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	3/8/2013	6 Days
Newspaper Notice	10 Days	3/4/2013	3/1/2013	13 Days
Mailed Notice (Owners & Residents - 300' Radius, Owners of Single-Family - 500' Radius)	10 Days	3/4/2013	3/4/2013	10 Days
Property Posting	N/A	N/A	N/A	N/A
Website	N/A	N/A	3/8/2013	6 Days

<sup>4</sup> Available online at [http://www.beverlyhills.org/services/planning\\_division/general\\_plan/genplan.asp](http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp)

<sup>5</sup> The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>

### Public Comment

The City has not received any public comments regarding the project as of the writing of this report.

### **ANALYSIS<sup>6</sup>**

Project approval, conditional approval or denial is based upon specific findings for each discretionary application requested by the applicant. Draft findings are included with this report in Attachment A and may be used to guide the Planning Commission's deliberation of the subject project.

The findings for a Zone Text Amendment relate to the amendment's impact on the public interest and general welfare. The required findings for the Development Plan Review for the proposed rooftop uses relate to preventing impacts on existing and future development in the City's residential and commercial neighborhoods, and ensuring that development will not be detrimental to the public health, safety, or general welfare. In reviewing the requested entitlements, the Commission may wish to consider the following information as it relates to the project and required findings.

**Zone Text Amendment – Building Massing.** The current code standards that regulate rooftop uses allow for rooftop structures (gymnasiums and lunchrooms) to be constructed up to 15 feet in height above the adjacent roof deck, provided that the rooftop structure is set back from the edge of the building by a distance equal to the height of the rooftop structure. The maximum allowed building height in most of the City's commercial zones is 45 feet (measured to the roof deck), and the 15-foot rooftop structure allowance provided for in the City's existing regulations creates a theoretical maximum height of 60 feet (45 + 15) for rooftop structures. The current setback requirements for rooftop structures help to alleviate the appearance of building massing by preventing the structures from being viewed from the adjacent sidewalk. The proposed amendment would establish separate provisions for unenclosed architectural features, and these architectural features would not be required to comply with the current setback requirements if approved by the Planning Commission. Although the amendment would not eliminate the setback requirements for other rooftop structures that do not qualify as unenclosed architectural features, unenclosed architectural features do have the possibility of adding to the appearance of building massing since they could be constructed in-line with the primary building façade, which is why it is important to maintain a discretionary review process with required findings for such a structure. 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. Because an unclosed architectural feature that is not set back from the building edge by a distance equal to its own height would be subject to a Development Plan Review (DPR), it is anticipated that the required findings for a DPR would be sufficient to prevent any structures that would result in inappropriate building massing. Although staff believes that the specific DPR finding regarding the public welfare could be utilized to modify or deny an inappropriately designed rooftop structure, the Commission may wish to consider further modifying the proposed amendment to incorporate additional findings related to massing and design.

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<sup>6</sup> The analysis provided in this section is based on draft findings prepared by the report author prior to the public hearing. The Planning Commission in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to modify the findings. A change to the findings may result in a final action that is different from the staff recommended action in this report.

**Zone Text Amendment – Architectural and Neighborhood Compatibility.** The proposed amendment to clarify allowed rooftop uses and allow unenclosed architectural features without a setback has the potential to impact architectural compatibility and neighborhood compatibility, primarily by way of building massing and increased outdoor activity. Building massing is discussed above and can be appropriately regulated through the DPR findings; however, the amendments will allow for the creation of more usable rooftop areas, which could have the potential to 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 (by code) to use by employees only. Ambient noise levels are higher during daytime hours, and the limited noise associated with an employee-only rooftop use is not expected to result in detrimental impacts. Furthermore, conditions of approval that restrict rooftop hours could be imposed on any rooftop use through the DPR process, which would further reduce the potential for noise impacts. 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.

**Zone Text Amendment – Privacy.** As discussed above, the proposed Zone Text 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 DPR 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 DPR would be reviewed by the Planning Commission to ensure that no impacts would result.

**Development Plan Review – Building Massing.** As proposed, the rooftop uses associated with the project would add unenclosed architectural features that vary in height along the rooftop perimeters of the subject buildings. These features range from approximately 2 feet in height to approximately 11 feet in height above the roof deck, and would be constructed of custom-perforated metal panels attached to a steel trellis structure. This design and construction methodology maintains a light and open feeling that compliments the building's architecture without weighing down the top edge of the building or creating the appearance of added massing. An additional benefit to these architectural features is that they will shade portions of the accessible roof deck, which will create an improved lunch area for employees of the buildings. Other components of the rooftop uses are subject to the requirement that they be set back from the building edge by a distance equal to their height, and as proposed are set back from the building's street-facing edge by approximately 50 feet. This setback provides relief along the building façade and prevents the appearance of additional mass.

**Development Plan Review – Architectural and Neighborhood Compatibility.** The proposed rooftop uses have been designed to complement the unique exterior design of the building, and provide for

an aesthetic finish to the building's top edges and rooftop area. The exterior design of the rooftop uses (specifically the unenclosed architectural features) have previously been reviewed by the Architectural Commission as part of remodel and construction of the subject buildings, and the Architectural Commission unanimously supported the proposed configuration. Neither of the subject properties is located adjacent to residential uses; however, the property located at 121 Spalding Drive is immediately adjacent to the Mosaic Hotel and its outdoor pool area. In order to ensure compatibility with this adjacent use, the rooftop uses are set back a minimum of 30 feet from the adjacent hotel and outdoor pool area. This preserves the integrity of the existing neighborhood and prevents any unnecessary impacts on the hotel or its guests. Additionally, staff recommends project-specific conditions, set forth in Attachment A, which include a requirement to maintain the 30-foot setback throughout the life of the project.

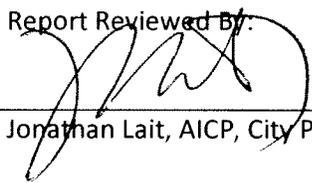
### **NEXT STEPS**

It is recommended that the Planning Commission conduct the public hearing and adopt the attached resolutions conditionally approving the requested Development Plan Review and recommending that the City Council approve the requested Zone Text Amendment.

Alternatively, the Planning Commission may consider the following actions:

1. Approve the project with modified findings or conditions of approval.
2. Deny the project, or portions of the project, based on revised findings.
3. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines, and at applicant's request or consent.

Report Reviewed By:



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Jonathan Lait, AICP, City Planner

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# ATTACHMENT A

## Staff Recommended Findings and Conditions of Approval

### DRAFT FINDINGS

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#### 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.

#### Development Plan Review

1. *The proposed plan is consistent with the general plan and any specific plans adopted for the area.*

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 proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.*

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 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.*

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. *The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.*

The project is located on the rooftops of two commercial buildings, and is intended to be used only by employees of the building that are already present at the site. 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 plan will not be detrimental to the public health, safety or general welfare.*

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.

## **DRAFT CONDITIONS**

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### Project Specific 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 not be used between the hours of 10:00 PM and 7:00 AM daily; however, this condition shall not prohibit the Applicant from hosting occasional employee events on the rooftop later than 10:00 PM, provided that the Applicant obtains a Special Event Permit pursuant to Chapter 8 of Title 4 of the Beverly Hills Municipal Code. In the event that the Director of Community Development determines that the type or frequency of employee 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 or 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 or her designee shall serve as the reviewing authority for any such request, and may, at his or her discretion, forward requests for exterior lighting to the Architectural Commission for consideration.

Standard Conditions

Please see attached resolution (Attachment B)

**ATTACHMENT B**  
**DRAFT DPR RESOLUTION**

RESOLUTION NO.

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. \_\_\_\_\_.

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.

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. The project is located on the rooftops of two commercial buildings, and is intended to be used only by employees of the building that are already present at the site. 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.

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 not be used between the hours of 10:00 PM and 7:00 AM daily; however, this condition shall not prohibit the Applicant from hosting occasional employee events on the rooftop later than 10:00 PM, provided that the Applicant obtains a Special Event Permit pursuant to Chapter 8 of Title 4 of the Beverly Hills Municipal Code. In the event that the Director of Community Development determines that the type or frequency of employee 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 or 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 or her designee shall serve as the reviewing authority for any such request, and may, at his or her discretion, forward requests for exterior lighting 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 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:

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

Attest:

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Secretary

Approved as to form:

Approved as to content:

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David M. Snow  
Assistant City Attorney

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Jonathan Lait, AICP  
City Planner



# **ATTACHMENT C**

## **DRAFT ZONE TEXT AMENDMENT RESOLUTION**

RESOLUTION NO.

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

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

Attest:

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Secretary

Approved as to form:

Approved as to content:

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David M. Snow  
Assistant City Attorney

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Jonathan Lait, AICP  
City Planner



**ATTACHMENT D**

**DRAFT ORDINANCE**

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

AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING SECTION 10-3-3107 OF THE MUNICIPAL CODE  
REGARDING ROOFTOP USES APPROVED PURSUANT TO  
A DEVELOPMENT PLAN REVIEW.

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 \_\_\_\_\_, 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 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.

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

Section 1. 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:

“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 gymnasiums, lunch areas and structures or uses ancillary to such lunch area, 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 lunch area and structures or uses ancillary to such lunch area 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. 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. 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:

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LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

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JEFFREY KOLIN  
City Manager

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SUSAN HEALY KEENE  
Director of Community Development

**ATTACHMENT E**  
**ARCHITECTURAL PLANS**  
**(PROVIDED SEPARATELY)**