

City Council Meeting: April 11, 2023

Santa Monica, California

ORDINANCE NUMBER 2741 (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA TO AMEND THE TEXT OF THE CITY'S ZONING ORDINANCE TO ESTABLISH AN OUTDOOR SPACE PROGRAM ALLOWING COMMERCIAL ACTIVITY ON PRIVATELY-OWNED PROPERTY AND OTHER AMENDMENTS RELATED TO EMERGENCY RESPONSE AND ECONOMIC RECOVERY, INCLUDING, BUT NOT LIMITED TO, EXTENSION OF CERTAIN PERMIT TIMEFRAMES

WHEREAS, on July 6, 2010, the City Council adopted the Land Use and Circulation Element of the City's General Plan ("LUCE") which designates the proposed general distribution, location and extent of land uses within the City; and

WHEREAS, the City's new Zoning Ordinance, Chapters 9.01 through 9.52 of Article 9 of the Santa Monica Municipal Code ("Zoning Ordinance"), became effective on July 24, 2015; and

WHEREAS, on July 25, 2017, the City Council adopted the Downtown Community Plan ("DCP") which sets forth the City's vision of the Downtown as a high quality, mixed-use district offering opportunities for housing for people across the income spectrum, jobs, arts and culture, local serving retail and community and visitor gathering places; and

WHEREAS, on March 13, 2020, the City Manager, in his role as the Director of Emergency Services, ("Director of Emergency Services") proclaimed the existence of a local emergency pursuant to Chapter 2.16 of the Santa Monica Municipal Code to ensure the availability of mutual aid and an effective the City's response to the novel coronavirus ("COVID-19") and this local emergency was restated on March 14, 2020, through a

revised declaration of local emergency to ensure compliance with all digital signature requirements (the “Executive Order”); and

WHEREAS, on March 16, 2020 the Director of Emergency Services issued a Third Supplement to the Executive Order, requiring the closure of a wide range of businesses including bars, nightclubs, on-premises restaurant service, movie theatres, live performance venues, gyms, fitness centers, spas, hair salons, massage parlors, and nail salons; and

WHEREAS, on March 17, 2020, the Director of Emergency Services issued a Revised Fourth Supplement to the Executive Order (“Revised Fourth Supplement”), which among other things, permitted public safety facilities, hospitals, clinics, and emergency shelters in all zoning districts and allowed the Director of the Community Development Department or designee to waive development standards, design review, parking and access requirements, and sign standards related to such uses, and allowed drive-through facilities for clinics, convenience markets, farmers markets, general markets, hospitals, pharmacies, and restaurants; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20 directing all residents of the State of California to heed directives issued by the State Health Officer on the same date instructing all Californians to stay home except as needed to maintain continuity of operations of the federal critical infrastructure sectors; and

WHEREAS, on March 19, 2020, the Los Angeles County Department of Public Health issued an enhanced Health Officer Order, the Safer at Home Order for Control of

COVID-19, amending and superseding its earlier March 16, 2020, Order, closing all nonessential businesses, and limiting gatherings to 9 people or less; and

WHEREAS, since March 19, 2020, the Los Angeles County Department of Public Health has on multiple occasions amended and modified its Health Officer Order, and as part of these amendments and modifications, nonessential businesses, including restaurants, lower-risk retail businesses, and gym and fitness establishments were subject to, at various times, prohibitions on operating indoors or restrictions on capacity; and

WHEREAS, on March 21, 2020, the Director of Emergency Services issued a Seventh Supplement to the Executive Order aligning the Santa Monica Municipal Code with a California Department of Alcoholic Beverage Control (“ABC”) “Notice of Regulatory Relief” permitting restaurants and retailers holding valid ABC licenses to sell alcoholic beverages for off-site consumption via delivery and take-out; and

WHEREAS, on May 29, 2020, the Director of Emergency Services issued an Eighteenth Supplement to the Executive Order, which, among other things, authorized temporary outdoor dining extensions to adjacent sidewalk and/or adjacent parking, courtyard, or other private open space owned by the restaurant; and

WHEREAS, on June 23, 2020, the Director of Emergency Services issued a Second Revised Eighteenth Supplement to the Executive Order that modified the First Revised Eighteenth Supplement to, among other things: extend the authorization for temporary dining to adjacent private spaces not owned by the restaurant and to sidewalks in front of adjacent buildings with the consent of either the owner or tenant; extend the authorization for temporary dining to areas of the Pier to be specified by the Director of

the Community Development Department subject to specified conditions and any additional regulations; extend the authorization for temporary dining to portions of the sidewalk or roadway in the Third Street Promenade to be specified by the Director of the Community Development Department subject to specified conditions and any additional regulations; authorize the temporary use by businesses of adjacent sidewalks, adjacent private outdoor space, and areas of the Pier to be specified by the Director of the Community Development Department for business activities other than temporary dining, subject to specified conditions and any additional regulations; and authorize restaurants and other businesses to establish temporary parklets for business activities and outdoor dining in on-street parking and loading spaces adjacent to the restaurant or business, subject to specified conditions, specified design and safety specifications, and any additional regulations; and

WHEREAS, the Second Revised Eighteenth Supplement also authorized Business Improvement Districts and individual eligible businesses that have obtained a temporary use permit to conduct sidewalk sales and other seasonal sales without otherwise complying with the provisions of the Executive Order; and

WHEREAS, on August 22, 2020, the Director of Emergency Services issued a Third Revised Eighteenth Supplement to the Executive Order ("Third Revised Eighteenth Supplement"), which, among other things, superseded and replaced the prior versions of the Eighteenth Supplement, authorized the specified uses of public and private outdoor spaces through the duration of the County's Health Officer Order, plus an additional 30 days, made other modification governing the conditions for use of the public and private

space, and set fines for violations of the conditions for operating in the public right-of-way and in private outdoor spaces through administrative citations; and

WHEREAS, on October 7, 2020, the Director of Emergency Services issued a Twenty-Seventh Supplement to the Executive Order (“Twenty-Seventh Supplement”), which, among other things, authorized the Director of the Community Development Department to issue regulations regarding and issue temporary use permits for certain uses allowed by the County Safer at Home Order, including temporary outdoor sales and special events, for a period longer than 45 days but less than 180 days and waived processing fees for such temporary use permits; and

WHEREAS, on November 23, 2020, the Director of Emergency Services issued a Twenty-Eighth Supplement to the Executive Order (“Twenty-Eighth Supplement”), which, among other things, authorized the Director of the Community Development Department to issue permits for and regulations regarding the temporary extension by certain eligible businesses of their operations into unused portions of the parking lane on Main Street where the City has placed K-rails and authorized such use through the duration of the County’s Health Officer Order, plus an additional 30 days; and

WHEREAS, on December 8, 2020, the Director of Emergency Services issued a Thirtieth Supplement to the Executive Order (“Thirtieth Supplement”), which, among other things, superseded and replaced Sections 1 through 3 of the Seventh Supplement with amended rules regarding off-site and retail alcohol sales that, in particular, add the requirement that authorized sales of to-go alcoholic beverages may be delivered to customers only at the same time as the required accompanying meals; and

WHEREAS, on January 28, 2021, the Director of Emergency Services issued a Thirty-Third Supplement to the Executive Order (“Thirty-Third Supplement”), which, among other things, authorized satellite outdoor dining in portions of the roadway in the Third Street Promenade pursuant to limitations set out in the supplement and regulations to be issued by the Director of the Community Development Department and authorized such use through the duration of the County’s Health Officer Order, plus an additional 30 days; and

WHEREAS, on March 19, April 6, April 14, May 12, May 26, June 9, June 23, July 14, July 28, September 8, October 27, and December 15, 2020, as well as on January 26, March 23, and effective May 22, 2021, the City Council ratified the Executive Order, as well as the supplements to the Executive Order in place at the time, including the Revised Fourth, Third Revised Eighteenth, Twenty-Seventh, Twenty-Eighth, Thirtieth, and Thirty-Third Supplements; and

WHEREAS, eligible businesses and restaurants with permits to use public and outdoor space as authorized under the Third Revised Eighteenth, Twenty-Eighth, and Thirty-Third Supplements were issued temporary outdoor permits or entered into temporary outdoor encroachment agreements with the City, the terms of which were coterminous with the County’s Health Officer Order plus an additional 30 days; and

WHEREAS, on April 6, 2021, the Governor of the State of California announced the California would fully re-open its economy on June 15, 2021, provided that vaccine supply was sufficient and hospitalization rates were stable and low; and

WHEREAS, on May 21, 2021, the California Department of Public Health announced that, other than for mega events (those with crowds greater than 5,000 for

indoor events and 10,000 for outdoor events), beginning on June 15, 2021, the State would not impose on businesses restrictions on capacity and physical distancing; and

WHEREAS, on May 21, 2021, the Los Angeles County Department of Public Health announced that the County would align with the State's June 15, 2021 reopening plans that ease many capacity limits and distancing requirements for businesses; and

WHEREAS, as a result of the restrictions imposed by the State's COVID-19-related guidance and the County's Health Officer Order, businesses, and particularly restaurants, have suffered significant economic hardships; for example, according to Santa Monica's fourth quarter sales tax report from 2020, restaurants went down 50-66% in sales from the same quarter in 2019 just prior to COVID-19; and

WHEREAS, on June 8, 2021, as a result of the State and County's announcements regarding a planned June 15 reopening, the City Council adopted Emergency Interim Zoning Ordinance Number 2674 (CCS) ("Emergency IZO 2674") establishing interim zoning regulations to support economic recovery following the anticipated termination of the authorizations to use public space for outdoor business activities as set forth in the City's Third Revised Eighteenth, Twenty-Eighth, and Thirty-Third Supplements, and to support continued emergency response and pandemic recovery, by authorizing: temporary use of private outdoor space; temporary permitted uses for emergency shelters, public safety facilities, and drive through facilities for Covid-19 testing and vaccination purposes; and flexibility in issuance of temporary use permits and alcoholic beverage sales (the "interim zoning regulations"); and

WHEREAS, on June 8, 2021, concurrently with consideration of Emergency IZO 2674, the City Council adopted Ordinance Number 2673 (CCS), an emergency ordinance

adding Santa Monica Municipal Code Chapter 6.40, Santa Monica Outdoors Pilot Program, authorizing continued use of public space under the Third Revised Eighteenth, Twenty-Eighth and Thirty-Third Supplements through June 30, 2022; and

WHEREAS, on June 14, 2021, the Director of Emergency Services issued a Thirty-Seventh Supplement to the Executive Order (“Thirty-Seventh Supplement”) which, among other things, allowed provisions of the Revised Fourth, Third Revised Eighteenth, Twenty-Sixth, Twenty-Seventh, Twenty-Eighth, Thirtieth, and Thirty-Third Supplements authorizing continued use of public and private outdoor space for business, emergency response, and pandemic recovery activities to expire because they had been superseded by the adoption of Emergency IZO 2674 and Ordinance 2673; and

WHEREAS, on July 27, 2021, the City Council adopted Emergency Interim Zoning Ordinance Number 2678 (CCS) extending the interim zoning regulations until June 30, 2022; and

WHEREAS, on December 31, 2021, the Notice of Regulatory Relief expired, including provisions authorizing off-site sales of alcoholic beverages by restaurants, and flexibility in retail sales of alcoholic beverages; and

WHEREAS, on January 1, 2022, SB 389 became effective, which extends authority for off-site sales of alcoholic beverages by restaurants; and

WHEREAS, the economic impacts of the COVID-19 closures of and limitations on businesses have been devastating to the local Santa Monica economy; and

WHEREAS, the COVID-19 pandemic and subsequent economic recovery has been difficult for many segments of the economy, even in light of economic efforts that are currently underway; and

WHEREAS, the City has an important government interest in maintaining a thriving business community and protecting the health, safety, and economic welfare of its citizens and businesses; and

WHEREAS, on May 10, 2022, the City Council adopted Emergency Interim Zoning Ordinance Number 2704 (CCS), extending the interim zoning regulations until December 21, 2022 to continue to allow eligible businesses to expand their operations to certain public and private outdoor spaces, provide continued flexibility in the issuance of temporary use permits and alcoholic beverage sales, facilitate business recovery, generate increased sales tax revenue for the City, and provide City staff the time necessary to develop and bring to Council a permanent and expanded program for businesses to use public and private outdoor space for their operations; and

WHEREAS Emergency IZO 2704 amended the interim zoning regulations to remove flexibility in retail sales of alcoholic beverages due to the expiration of the Notice of Regulatory Relief and update regulations permitting offsite sale of alcoholic beverages by restaurants for consistency with SB 389; and

WHEREAS, on May 24, 2022, the City Council adopted Ordinance Number 2705 (CCS) to extend the provisions of Chapter 6.40, Santa Monica Outdoors Pilot Program, to September 30, 2022, unless otherwise extended or terminated earlier by the City at its discretion and consistent with any noticing requirements set forth in administrative regulations or any licensing agreement between the City and an eligible business; and

WHEREAS, on July 12, 2022, the City Council adopted Ordinance Number 2708 (CCS), adding Santa Monica Municipal Code Chapter 6.42, Santa Monica Outdoors Parklet Program, to authorize the Director of Community Development to issue parklet

permits and license agreement with eligible businesses, including businesses that were previously issued permits in accordance with Chapter 6.40; and

WHEREAS, on October 11, 2022, the City Council adopted Emergency Interim Zoning Ordinance Number 2724 (CCS), further extending the interim zoning regulations to June 30, 2023; and

WHEREAS, the interim zoning regulations support economic recovery by temporarily suspending zoning regulations and provisions of previously-issued permits, including, but not limited to, parking requirements (except for those relating to accessible parking) and maximum floor area ratio, to the extent necessary to accommodate the temporary uses permitted by the interim zoning regulations, the Santa Monica Outdoors Pilot Program and the Santa Monica Outdoors Parklet Program; and

WHEREAS, currently, and in accordance with the interim zoning regulations, 94 local businesses are using a Temporary Outdoor Use Permit to conduct retail, restaurant, and fitness activities on private outdoor property—surface parking lots, courtyards, and other spaces on associated privately-owned commercial property—to help offset any pandemic-related indoor use restrictions or accommodate customer preference of being outdoors; and

WHEREAS, the interim zoning regulations have been a critical component of the City's response to sustain businesses in Santa Monica during the COVID-19 pandemic as well as to allow for certain zoning changes to support emergency response and economic recovery; and

WHEREAS, the interim zoning regulations were established to be flexible with minimal zoning requirements considering indoor health and safety restrictions on indoor

usage throughout the COVID-19 pandemic, and, as part of the City's economic recovery efforts and business retention, program requirements were based primarily to address fire, life, and safety issues, consistent with the evolving county health and safety requirements; and

WHEREAS, encouraging businesses to utilize outdoor space has shown to be important for businesses retention; and

WHEREAS, the City has a significant public interest in maintaining flexibility for businesses while ensuring these outdoor spaces do not significantly impact the site and its surroundings, do not create parking circulation conflicts, and are compliant with fire and Building Code requirements; and

WHEREAS, on June 1, 2022, the Planning Commission adopted a Resolution of Intention, Resolution Number 22-012 (PCS), declaring its intention to consider recommending to the City Council that the City Council amend text of the Zoning Ordinance to establish an Outdoor Space Program allow outdoor commercial activity on privately-owned property, and consideration of other zoning changes related to emergency response and economic recovery, including, but not limited to, amendments to allow for flexibility in offsite sales of alcoholic beverages by restaurants and to ensure consistency with expanded authorization to allow outdoor commercial activity on certain public outdoor spaces; and

WHEREAS, on January 25, 2022, the City Council adopted Emergency Interim Zoning Ordinance Number 2688 (CCS) amending SMMC Section 9.37.090 to codify two-year extensions for permits issued under the Zoning Ordinance as enacted through the Executive Order, to expand eligibility to permits issued through December 31, 2022 or

issued pursuant to a complete application submitted through December 31, 2022, and to increase flexibility for an application of a first-time extension for those permits; and

WHEREAS, on March 22, 2022, the City Council adopted Emergency Interim Zoning Ordinance Number 2698 (CCS) extending the interim zoning regulations established by IZO 2688 to December 31, 2022; and

WHEREAS, amending Santa Monica Municipal Code Section 9.37.090 to incorporate the interim zoning regulations will codify the permit timeframe extensions established by the Emergency Order and the interim zoning regulations due to unavoidable delays caused by the COVID-19 public health emergency and further economic recovery efforts; and

WHEREAS, on September 7, 2022, the Planning Commission adopted a Resolution of Intention, Resolution Number 22-016 (PCS), declaring its intention to consider recommending to the City Council that the City Council amend Santa Monica Municipal Code Section 9.37.090 to extend certain permit timeframes for applications and permits issued and active during the COVID-19 health emergency; and

WHEREAS, on January 25, 2023, the Planning Commission conducted a duly noticed public hearing, and, after considering oral and written testimony regarding the proposed amendments to the text of the Zoning Ordinance, adopted Resolution Number 23-001 (PCS), recommending that the City Council amend the text of the Zoning Ordinance to establish an Outdoor Space Program allow outdoor commercial activity on privately-owned property, and consideration of other zoning changes related to emergency response and economic recovery, including extension of certain permitting

timeframes set forth in Santa Monica Municipal Code Section 9.37.090 based on the following findings:

1. The proposed amendments to the text of the Zoning Ordinance are consistent with the General Plan in that the amendments implement LUCE policies to adapt to changing conditions and to support small businesses. Specifically, Goal LU9 states to actively monitor and manage land use changes to address community needs, promote citywide sustainability and ensure community livability. In response to the Pandemic, the City's economic recovery efforts seek to support and allow businesses to adapt to the current health and safety conditions. The proposed Zoning amendments establishing standards and requirements for outdoor space supports local business retention and promotes new business opportunities citywide, addressing needs of the business community and residents. In addition, Policy LU13.4 seeks to reduce regulatory costs on small businesses and for the City to continue exploring ways to streamline the approval process for new and existing businesses. Accordingly, the proposed amendments support small businesses by simplifying land use standards encouraging the commercial use of outdoor space. The proposed amendments are consistent with citywide goals and policies related to maintaining a diversified and sustainable economy. Consistent with Goal E1 which seeks to create an economic base that satisfies the commercial needs of the City's residents while providing employment opportunities and a strong fiscal infrastructure for the City and consistent with Policy E1.1

which states to make land use decisions that respond to changing market conditions and meet the needs of City residents and visitors, the proposed amendments will encourage the commercial use of outdoor space to meet the economic needs for business retention and the establishment of new business as part of the City's economic recovery efforts following the current Pandemic. Furthermore, consistent with LUCE goals and policies, permit timeframe extensions are necessary due to the devastating impact the Pandemic-mandated closures and limitations have had on the local economy, and necessary to stimulate economic recovery to protect the public health, safety, and welfare of the City.

2. The proposed amendments to the text of the Zoning Ordinance are consistent with the purpose of the Zoning Ordinance to promote the growth of the City in an orderly manner and to promote and protect the public health, safety, and general welfare in that proposed amendments will provide continued support necessary for the City's business retention and economic recovery efforts while ensuring the protection of neighborhoods following the current Pandemic. Additionally, the permit timeframe extensions are necessary to promote the growth of the City and protect the public health, safety, and general welfare by assisting with unavoidable delays in project development and processing caused by the Pandemic.

WHEREAS, on March 14, 2023, the City Council conducted a duly noticed hearing to consider the findings and recommendations of the Planning Commission, and desires to adopt the proposed Zoning Ordinance amendments as set forth below.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Based upon the oral and written testimony presented to the City Council at the public hearing on March 14, 2023 regarding the proposed changes to the text of the Zoning Ordinance, the City Council hereby makes the following findings:

1. The proposed amendments to the text of the Zoning Ordinance are consistent with the General Plan in that the amendments implement LUCE policies to adapt to changing conditions and to support small businesses. Specifically, Goal LU9 states to actively monitor and manage land use changes to address community needs, promote citywide sustainability and ensure community livability. In response to the Pandemic, the City's economic recovery efforts seek to support and allow businesses to adapt to the current health and safety conditions. The proposed Zoning amendments establishing standards and requirements for outdoor space supports local business retention and promotes new business opportunities citywide, addressing needs of the business community and residents. In addition, Policy LU13.4 seeks to reduce regulatory costs on small businesses and for the City to continue exploring ways to streamline the approval process for new and existing businesses. Accordingly, the proposed amendments support small businesses by simplifying land use

standards encouraging the commercial use of outdoor space. The proposed amendments are consistent with citywide goals and policies related to maintaining a diversified and sustainable economy. Consistent with Goal E1 which seeks to create an economic base that satisfies the commercial needs of the City's residents while providing employment opportunities and a strong fiscal infrastructure for the City and consistent with Policy E1.1 which states to make land use decisions that respond to changing market conditions and meet the needs of City residents and visitors, the proposed amendments will encourage the commercial use of outdoor space to meet the economic needs for business retention and the establishment of new business as part of the City's economic recovery efforts following the current Pandemic. Furthermore, consistent with LUCE goals and policies, permit timeframe extensions are necessary due to the devastating impact the Pandemic-mandated closures and limitations have had on the local economy, and necessary to stimulate economic recovery to protect the public health, safety, and welfare of the City.

2. The proposed amendments to the text of the Zoning Ordinance are consistent with the purpose of the Zoning Ordinance to promote the growth of the City in an orderly manner and to promote and protect the public health, safety, and general welfare in that proposed amendments will provide continued support necessary for the City's business retention and economic recovery efforts while ensuring the protection of neighborhoods following the current Pandemic. Additionally,

the permit timeframe extensions are necessary to promote the growth of the City and protect the public health, safety, and general welfare by assisting with unavoidable delays in project development and processing caused by the Pandemic.

SECTION 2. Santa Monica Municipal Code Section 9.04.080 is hereby amended to read as follows:

9.04.080 Determining Floor Area

The floor area of a building is the total gross horizontal areas of all floors of a building, including usable basements and all other areas measured from the interior face of the exterior walls or, in the case of a shared wall, from the centerline of a wall separating the 2 buildings. Floor area also includes unenclosed decks, balconies, porches, and platforms used for commercial or restaurant activity. In addition to calculating floor area ratio, floor area shall be used to determine parking requirements and all relevant impact fees, including, but not limited to, affordable housing fees, transportation impact fees, childcare linkage fees, cultural arts fees, and parks and recreation fees.

A. **Included in Floor Area.** Floor area is deemed to include:

1. The actual floor space of all habitable rooms on all levels and mezzanines, interior balconies, lofts, and closets;
2. Restrooms, lounges, lobbies, kitchens, storage areas, and interior hallways and corridors;
3. Portions of basements that meet Building Code requirements for habitable space;
4. Enclosed and roofed porches and balconies;

5. Interior courtyards, atria, paseos, walkways and corridors that are fully enclosed;
6. Storage and equipment spaces that are roofed and enclosed on all sides; and
7. Covered parking at or above grade.

B. Excluded from Floor Area. Floor area does not include:

1. Stairways and stairwells;
2. Elevators, elevator equipment rooms, and elevator shafts;
3. Ramps to a subterranean or semi-subterranean parking structure or ramps between floors of a parking structure provided the ramp does not accommodate parking;
4. Loading spaces and docks used exclusively for loading and unloading as required by Section 9.28.080;
5. Unenclosed decks, balconies, porches, and platforms not used for commercial or restaurant activity;
6. In the Third Street Promenade Area, unenclosed rooftop areas used for commercial or restaurant activity ("unenclosed rooftop areas"), subject to the following specific standards:
 - a. Unenclosed rooftop areas shall be surrounded by a barrier not to exceed 42 inches in height with an allowable transparent barrier not to exceed 42 inches in height. The barrier shall be permanently affixed to the rooftop;
 - b. Unenclosed rooftop areas, including barrier, shall be set back a minimum five feet from the edges of the building;

c. Portable restrooms, storage sheds, or other similar temporary structures shall not be permitted on the rooftop;

d. Rooftop features such as sunshades, trellises, or canopies shall not exceed 10 feet in height with a maximum aggregate coverage of 50% of the unenclosed rooftop area;

e. Unenclosed rooftop areas shall not be accessible to the public outside of their normal business operating hours.

7. Covered and uncovered courtyards, arcades, atria, paseos, walkways, and corridors located at or near the street level and are accessible to the general public provided they are not used as sales, display, storage, service, or production areas;

8. Parking areas located below finished grade or finished floor of habitable space where the vertical distance between finished grade and finished floor is 5 feet or less;

9. Semi-subterranean parking areas that meet the following criteria:

a. The parking area is located below finished grade along a minimum of one street frontage,

b. The portions of the parking area located above finished grade are a result of the site's slope and cannot feasibly be fully subterranean due to geological or physical site constraints, and

c. The facades of any of the visible portions of the parking area located above finished grade are appropriately treated and landscaped;

10. Mechanical equipment rooms, electrical rooms, telecommunication equipment rooms, and similar space located below grade;

11. Enclosures constructed pursuant to Section 9.31.060, Automobile Repair, Major and Minor, for outdoor hoists in existence on the adoption of Ordinance Number 1452 (CCS);

12. Attics;

13. Accessory dwelling units and junior accessory dwelling units established in accordance with Section 9.31.025;

14. Commercial outdoor space permitted pursuant to SMMC 9.31.199, Outdoor Commercial Uses on Private Property, and SMMC 9.31.200, Outdoor Dining and Seating on Sidewalks, shall be excluded from floor area.

SECTION 3. Santa Monica Municipal Code Section 9.04.090 is hereby amended to read as follows:

9.04.090 Determining Floor Area Ratio

Floor Area Ratio (FAR) is the ratio of the floor area, excluding the areas described below, of all principal and accessory buildings on a site to the site area. To calculate FAR, floor area is divided by site area, and typically expressed as a decimal. For example, if the floor area of all buildings on a site totals 20,000 square feet, and the site area is 10,000 square feet, the FAR is expressed as 2.0. For parcels containing one or more zoning designations, only that portion zoned for commercial or industrial use shall be used as parcel area when calculating floor area ratio.

A. Floor Area Ratio Exclusions

1. Floor area devoted to basements.
2. Unenclosed decks, balconies, porches, plazas, outdoor dining areas permitted pursuant to Section 9.31.200, Outdoor Dining and Seating on Sidewalks,

provided the dining areas have no more than a 42-inch high barrier surrounding the dining area and is visible from the public right-of-way, and other open spaces, and outdoor space permitted pursuant to Section 9.31.199, Outdoor Commercial Uses on Private Property.

3. In the Third Street Promenade Area, unenclosed rooftop areas used for commercial or restaurant activity (“unenclosed rooftop areas”), subject to the following specific standards:

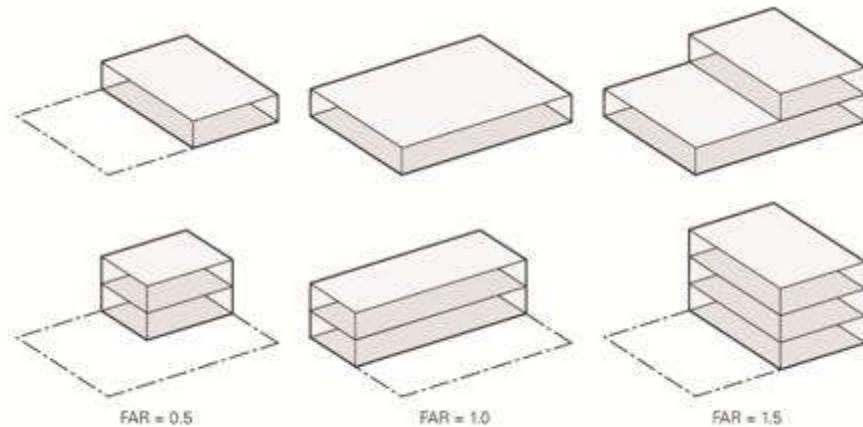
a. Unenclosed rooftop areas shall be surrounded by a barrier not to exceed 42 inches in height with an allowable transparent barrier not to exceed 42 inches in height. The barrier shall be permanently affixed to the rooftop;

b. Unenclosed rooftop areas, including barrier, shall be set back a minimum five feet from the edges of the building;

c. Portable restrooms, storage sheds, or other similar temporary structures shall not be permitted on the rooftop;

d. Rooftop features such as sunshades, trellises, or canopies shall not exceed 10 feet in height with a maximum aggregate coverage of 50% of the unenclosed rooftop area;

e. Unenclosed rooftop areas shall not be accessible to the public outside of their normal business operating hours.



SECTION 4. Santa Monica Municipal Code Section 9.27.050 is hereby amended to read as follows:

Section 9.27.050 Legal Nonconforming Uses

9.27.050 Legal Nonconforming Uses

A legal, nonconforming use may be maintained subject to the following provisions:

- A. **Change of Ownership.** A change of ownership, tenancy, or management of a nonconforming use shall not affect its status as a legal, nonconforming use.
- B. **Abandonment.** If a nonconforming use of a building, structure, or parcel ceases for a continuous period of one year or more, the use shall be considered abandoned, and the building, structure, or parcel shall thereafter be used only in accordance with the regulations for the District in which it is located except as provided below. It is the responsibility of the applicant to provide evidence demonstrating to the satisfaction of the Director that the use was legally established and has not been abandoned. Notwithstanding the above, no nonconforming residential use shall be considered abandoned regardless of the length of time of non-use unless the Director determines the

building is dangerous, unsafe, a health and safety hazard, and/or uninhabitable, and these conditions cannot be remedied.

1. The one-year period to determine that a nonconforming use has been abandoned shall commence when the use ceases and any one of the following occurs:

- a. The business license lapses;
- b. The site is vacated;
- c. The lease is terminated;
- d. Utilities are terminated; or
- e. A conforming use that meets the applicable requirements of this Ordinance is lawfully established in the space previously occupied by the nonconforming use.

2. Once the one-year period has commenced under subsection (B)(1) that period shall only be terminated if the nonconforming use is fully licensed, permitted, and operational for 60 continuous days. Operational shall mean that the nonconforming use is open for business to the public and provides services typically associated with the nonconforming use during the hours and days that are customary for that nonconforming use.

3. Cessation of use due to remodeling shall not be considered abandonment so long as building permits are active in accordance with Chapter 8.08 of the Municipal Code. However, if the building permit expires before the use resumes, the one-year period under Subsection (B)(1) shall relate back and commence with the cessation of use.

4. Except as provided in Subsection (B)(5), no nonconforming use may be resumed, reestablished, or reopened once it has been determined to have been abandoned for one year.

5. If the nonconforming use of a building, structure, or parcel occurred in a City-Designated Historic Resource, the nonconforming use may be resumed, reestablished, or reopened even if that nonconforming use has been abandoned for more than one year and other uses have occurred since that abandonment if a Conditional Use Permit is obtained based on the following findings:

a. The City-Designated Historic Resource was not in residential use as of December 16, 2014;

b. The proposed use is compatible with existing and permissible land uses within the District and the general area in which the proposed use is to be located;

c. The proposed use is compatible with any of the land uses presently on the subject parcel if the land uses are to remain;

d. The physical location or placement of the use on the site is compatible with and relates harmoniously to the surrounding neighborhood;

e. The subject parcel is physically suitable for the type of land use being proposed; and

f. The proposed use would not be detrimental to the public interest, health, safety, convenience, or general welfare.

6. Notwithstanding the foregoing, or anything to the contrary in this Ordinance, the following legal, nonconforming uses may be resumed, reestablished, or reopened,

even if that nonconforming use has been abandoned for more than one year, unless a conforming use that meets the applicable requirements of the Zoning Ordinance has been lawfully established in the space previously occupied by the nonconforming use:

a. In areas excluding the Third Street Promenade Area:

- i. Restaurant, full service;
- ii. Restaurant, limited service and take-out;
- iii. Food hall;
- iv. General retail sales, small scale; and
- v. General retail sales, medium scale.

b. In the Third Street Promenade Area:

- i. Bar/nightclub/lounge;
- ii. Restaurant, full service
- iii. Restaurant, limited service and take-out;
- iv. Food hall;
- v. General retail sales, small scale; and
- vi. General retail sales, medium scale.

C. **Conversion to Conforming Use.** If a nonconforming use is converted to a conforming use, the nonconforming use may not be resumed except as authorized by subsection (B)(5).

D. **Expansion of Nonconforming Use.** A nonconforming use of a building or portion of a building that conforms to the development standards of this Chapter shall neither be expanded into any other portion of the building nor changed except to a conforming use. The nonconforming use of land shall not be expanded or extended in area, except that

outdoor dining areas and other outdoor spaces permitted pursuant to SMMC 9.31.199, Outdoor Commercial Uses on Private Property, and SMMC 9.31.200, Outdoor Dining and Seating on Sidewalks, shall not be considered an expansion in area for the purposes of this Subsection.

E. Intensification of Uses. A nonconforming use shall not be permitted to substantially change in mode or character of operation. A substantial change in mode or character of operation shall include, but is not limited to, addition of uses, a change in operational hours that extends past 11:00 p.m. any night Sunday through Thursday and/or midnight on Friday and/or Saturday or begins before 7:00 a.m., a 5 percent increase in the floor area of the premises, or a 5 percent increase in the number of seats in any restaurant, but in no case shall the increase exceed any established seating limitation in the underlying zoning district.

F. Continuation/Reinstatement. The uses existing in a structure that have been restored pursuant to Section 9.27.040 may be continued/reinstated in the reconstructed/replacement structure so long as no continued/reinstated nonconforming uses are expanded, changed or substituted.

G. Legal, Nonconforming Rent-Controlled Multiple-Unit Properties. Notwithstanding subsection (D), existing multi-unit residential units in the R1 Single Family Residential District that are presently controlled by Article XVIII of the City Charter may be expanded in area provided such expansion complies with all other applicable Code provisions, including those governing height, number of stories, setbacks, stepbacks, parcel coverage and off-street parking (unless the City's Parking and Traffic

Engineer determines that the provision of parking is not feasible), and the number of housing units on the multi-unit residential property does not increase.

SECTION 5. Santa Monica Municipal Code Section 9.28.040 is hereby amended to read as follows:

9.28.040 Calculating Off-Street Parking and Loading Spaces

A. Rules for Calculating Required Spaces. The following rules shall be followed for calculating the amount of off-street parking and loading spaces.

1. ***Rounding.*** Fractional space requirements totaling 0.5 or above shall be rounded up to the next whole space after calculating the total number of required spaces. Rounding up shall not apply to loading spaces; however, a minimum of one space shall be provided.

2. ***Residential Uses.*** For purposes of calculating off-street parking requirements for dwelling units, all private living spaces including, but not limited to, dens, studios, family rooms, studies and lofts shall be considered as “bedrooms” except that a maximum of one such room per unit shall not count as a bedroom if it is less than 100 square feet in area. Kitchens, bathrooms, and one living room per unit shall not be considered bedrooms. Semiprivate rooms shall not count as bedrooms if they have no doors and a minimum 7-foot opening to adjacent living space. A loft or mezzanine shall not count as a bedroom if the maximum width of the loft or mezzanine is less than 7 feet.

3. ***Nonresidential Uses.*** Unless otherwise specified, the floor areas used to calculate the number of off-street parking and loading spaces required for nonresidential uses shall include:

a. All floor area located above or below grade devoted to office, retail, service, or other activities and uses, storage areas, restrooms, lounges, lobbies, kitchens, and interior hallways and corridors, unless exempted by this Chapter; and

b. All outdoor areas that will accommodate a permanent activity that will generate a demand for parking facilities in addition to that which is provided for principal activities and uses within the building or structure.

4. ***Exclusions.*** Floor area devoted to the following shall not be included when determining required parking and loading spaces:

a. Automobile parking;

b. Loading areas;

c. Driveways, drive aisles, ramps;

d. Bicycle parking;

e. Showers or locker areas not associated with a physical training, personal service or instructional service; and

f. Outdoor dining areas and other outdoor space permitted pursuant to SMMC 9.31.199, Outdoor Commercial Uses on Private Property, and SMMC 9.31.200, Outdoor Dining and Seating on Sidewalks.

5. ***Maximum Parking Requirements.*** The maximum number of parking spaces allowed shall be based on use type as listed in the table in Section 9.28.060, Off-Street Parking. The following rules apply when calculating maximum parking requirements:

a. *Multiple Uses.* When 2 or more principal uses are located on the same parcel, the estimated parking demand shall be the sum of the estimated demand of the various individual uses computed separately, in accordance with this Section, unless shared parking is approved pursuant to Section 9.28.180.

b. *Maximum Amount of Parking.* The maximum allowable amount of parking shall be 2 spaces or 5%, more, whichever is greater, than the quantities specified in Section 9.28.060, except for permanent public parking. No additional parking is allowed in excess of the quantities specified in Section 9.28.060 for the Downtown Community Plan area. In order to obtain approval for permanent public parking in excess of these maximum allowable amounts, a Conditional Use Permit approved by the Planning Commission shall be required pursuant to Chapter 9.41, subject to the following additional required findings:

i. Parking provided in excess improves the pedestrian, transit, and bicycle network;

ii. Vehicle movement on or around the project site associated with the excess parking does not unduly impact pedestrian spaces or movement, transit service, bicycle movement, or the overall traffic movement in the district;

iii. Accommodating excess parking does not degrade the overall urban design quality of the project proposal;

iv. All above-grade parking is architecturally screened and the excess parking does not diminish the quality and viability of existing or planned landscape enhancements; and

v. Where off-street parking is proposed that exceeds the maximum quantities specified, such parking shall not be the principal use of the property.

c. *Replacement of Existing Parking.* If a site contains existing surface parking that serves as Code or permit-required parking for an off-site user, such parking spaces may be replaced on-site as part of any redevelopment of the site, and such replacement parking shall not be considered parking that exceeds the quantities specified in Section 9.28.060 for purposes of subsection (A)(5)(b).

d. *Parking Requirements of Other Governmental Entities.* Should parking above the maximum be imposed by another governmental entity based on established minimum parking requirements, and such additional parking was not simply requested by the applicant, parking in the amount to meet the entity's minimum requirements may be allowed.

6. ***Minimum Parking Requirements.***

a. *Downtown Community Plan Area.* There is no minimum parking requirement.

b. *Citywide and Parking Overlay 1 Area.* The minimum parking must comply with Section 9.28.060, except as elsewhere allowed in this Chapter.

SECTION 6. Santa Monica Municipal Code Section 9.31.199 is hereby added to read as follows:

9.31.199 Outdoor Commercial Uses on Private Property

A. Purpose. The purpose of this Section is to allow existing and new businesses to expand outdoor commercial activity using on-site surface parking lots or common open

areas located on private property and to ensure that such uses do not adversely impact adjacent properties and surrounding neighborhoods consistent with the goals, objectives, and policies of the General Plan. Eligible businesses proposing outdoor space shall be designed, located, and operated in accordance with the requirements of this Section.

B. Definitions. The definitions in Santa Monica Municipal Code Section 9.52.020 apply to the terms and phrases used in this Chapter, unless otherwise specified herein. In addition, the following terms and phrases have the following meanings when used in this section:

1. “Eligible business” means: (1) a business that operates out of a physical location in the City and has received any necessary entitlements from the City to operate; (2) the use of the physical location by the business is a commercial use classification that is permitted or conditionally permitted in the district, other than those uses specifically prohibited under this Section, as those terms are defined by Santa Monica Municipal Code Section 9.51.030; and (3) an expansion of an existing commercial use located on the same parcel located in a nonresidential or Oceanfront district, or adjacent residentially zoned parcel.

2. “Outdoor Space” is inclusive of all or a portion of a common area, such as a surface parking lot, courtyard, plaza, roof deck, or other private open space area located on private property.

C. Applicability. Except as specifically identified, the provisions of this Section shall apply to eligible businesses proposing new outdoor space areas and to existing private outdoor use areas that are expanded or enlarged by more than 10% in outdoor space, in accordance with the requirements of this Section.

1. Santa Monica Pier: An eligible business on the Santa Monica Pier shall be subject to the requirements of this Section, except such business shall be exempt from the following requirements:

- a. Maximum Size;
- b. Location;
- c. Hours of Operation;
- d. Conversion of Parking Spaces.

D. Procedure. An outdoor space permit shall be subject to a Zoning Conformance Review, pursuant to the procedures of Chapter 9.38, Zoning Conformance Review, or subject to application review using a form designated by the Director to ensure consistency with all of the standards of this Section unless such review has been conducted in conjunction with discretionary review of the associated commercial use. Any improvements associated with the outdoor space shall be subject to Building and Safety and the Fire Department review and shall be subject to administrative Architectural Design Review in accordance with Santa Monica Municipal Code Chapter 9.55.

E. Permitted Uses. The outdoor space shall be conducted as an accessory use to a legally established commercial use permitted or conditionally permitted within a non-residential district or the Oceanfront District. Except for those uses specifically prohibited under this Section, permitted uses within the outdoor space shall be regulated by the underlying zoning district.

F. Expansion of Legal Non-Conforming Uses. Notwithstanding anything to the contrary in SMMC 9.27.050 Legal Non-Conforming Uses, any proposed outdoor space

by an eligible business considered a legal non-conforming use shall not be considered an expansion in area and may be authorized in accordance with this Section.

G. Prohibited Uses. The following uses are prohibited and not considered eligible businesses:

1. Automobile/vehicle Sales and Service, Minor or Major
2. Animal Care, Sales, and Services
3. Liquor Stores

H. Accessory Use. Outdoor space shall be conducted as an accessory use to an eligible business that is located on the same parcel or a contiguous adjacent parcel.

I. Service and Sale of Alcoholic Beverages. Alcoholic beverages may be sold and served in outdoor spaces by restaurants that: (a) have obtained and are operating under a license to sell alcoholic beverages from Alcoholic Beverage Control (ABC); and (b) have obtained and are operating under a Conditional Use Permit or Alcohol Exemption issued by the City, or are operating as an existing alcohol outlet without a Conditional Use Permit pursuant to Section 9.31.040 of the Santa Monica Municipal Code. Sales shall be conducted in accordance with all requirements and conditions set forth in such licenses and permits, including those required by the ABC. Permitted outdoor spaces used by restaurants are for sit-down food and beverage service only; no stand-up service is permitted.

J. Hours of Operation. Hours of operation of the permitted space shall not exceed the hours of operation of the associated eligible business, subject to limitations on alcohol sales set forth in all applicable permits, license, and regulations. If no applicable permit,

license or regulation states hours for operation of the outdoor space, the following times shall apply:

1. All Eating and Drinking Establishments: Hours of operation shall be limited to 8:00 a.m. to 11:00 p.m.
2. Personal Services, Physical Training: Hours of operation shall be limited to 7:00 a.m. to 7:00 p.m.

K. Exemptions: Floor Area, Floor Area Ratio (FAR), and Parking Requirements.

Outdoor space shall be excluded from the following:

1. Floor Area and Floor Area Ratio (FAR) calculations.
2. Minimum parking requirements.

L. Size. Outdoor spaces shall have no size limit for each eligible business provided that the outdoor space complies with Building Code, Fire Code, and objective transportation standards established by the Mobility Division.

M. Location. Outdoor spaces shall be located on the same parcel or on a contiguous adjacent parcel under common ownership, and limited to the following locations:

1. Surface parking lots and common open areas on the subject property including but not limited to courtyards and roof areas.
2. If located on a parcel adjacent to a residential use, the outdoor space shall be setback a minimum of 15 feet from the property line abutting the adjacent residential use.
3. Outdoor spaces may be located on existing surface parking lots supporting on-site commercial uses with residential zoning provided; (1) the surface parking lot

serves the subject commercial property under common ownership and; (2) the proposed outdoor space is ancillary to an eligible business.

4. A single contiguous outdoor space is allowed for each eligible business when located within a parking lot.

N. Conversion of Existing Parking Areas. Any permitted outdoor space by conversion of existing parking spaces or areas shall comply with the requirements or conditions set forth in the administrative regulations issued under this Section, including the following:

1. No required accessible parking spaces (ADA parking spaces) or related access aisle or path of travel shall be converted or removed. Vehicular access to all required ADA parking spaces shall be maintained.

2. Except as provided in paragraph 1, above, there shall be no limit to the number of existing parking spaces that can be converted pursuant to this Section provided that the outdoor space complies with Building Code, Fire Code, and objective transportation standards established by the City's Mobility Division.

O. Design Standards. The design of any outdoor space improvements including but not limited to barriers, railings, shade structures, furnishings, lighting fixtures, and signage shall comply with the requirements or conditions set forth in the administrative regulations issued under this Section.

P. Accessibility. Outdoor space shall comply with accessibility requirements or conditions set forth in the administrative regulations issued under this Section.

Q. Structures and Decks. Construction of any structures or decks shall comply with requirements or conditions set forth in the administrative regulations issued under this Section.

R. Temporary Tents and Canopies. Temporary tents, canopies, or similar enclosures shall not be utilized as permanent shelter in conjunction with outdoor spaces. Temporary use of tents or canopies may be permitted subject to required permits issued by the Fire Department only on a temporary seasonal basis and shall comply with the requirements or conditions set forth in the administrative regulations issued under this Section.

S. Propane & Electric Heaters. Propane or electric heaters may be permitted in support of outdoor spaces, subject to Fire Department permit requirements as set forth in the administrative regulations issued under this Section.

T. Signage. Notwithstanding anything to the contrary in Chapter 9.61 of the Santa Monica Municipal Code, an eligible business may place a single non-permanent, non-electric sign no taller than 42" and no larger than 10 square feet in size on any outside barrier of the outdoor space. The sign can only contain the eligible business name and a menu. Outdoor spaces may not contain any advertising, marketing, or promotional signage or materials.

U. Noise. All forms of speaker amplification, televisions or similar screen projectors are prohibited. Outdoor space operations shall comply with Chapter 4.12 Noise.

V. Administrative Regulations.

1. The Director may adopt administrative regulations to implement the provisions of this Section, including, but not limited to, design and accessibility

specification standards for outdoor spaces, application procedures, and other permit conditions and requirements.

2. A permittee shall comply with any other permit requirements or conditions set forth in the administrative regulations issued under this Section.

W. **Outdoor Space Permit Renewals.** An eligible business issued a Temporary Use of Private Outdoor Space Permit by the City pursuant to emergency orders (Eighteenth Supplemental Order) and subsequent Emergency Interim Zoning Ordinances between May 29, 2020 and the adoption of this Section 9.31.199 shall be required to renew their existing permit prior to March 31, 2024 in accordance with Section 9.31.199(D) to retain their permitted outdoor space. Any applications subsequent to this date shall be subject to all requirements of this Section.

SECTION 7. Santa Monica Municipal Code Section 9.31.200 is hereby amended to read as follows:

9.31.200 Outdoor Dining and Seating on Sidewalks

Outdoor dining and seating on sidewalks shall be designed, located, and operated consistent with the following standards:

A. **Purpose.** The purpose of this Section is to permit outdoor dining and seating that enhances the pedestrian ambiance of the City while not adversely impacting adjacent properties or surrounding neighborhoods consistent with the goals, objectives, and policies of the General Plan.

B. **Applicability.** The provisions of this Section shall apply to all new outdoor dining and seating areas on Public Rights-of-Way, such as sidewalks, and to all existing outdoor dining and seating areas that are expanded.

C. **Procedure.** The establishment of an outdoor dining and seating area requires Zoning Conformance Review, pursuant to the procedures of Chapter 9.38, Zoning Conformance Review, to ensure consistency with all of the standards of this Section unless such review has been conducted in conjunction with discretionary review of the associated commercial use and issuance of a Sidewalk Dining Permit.

D. **Accessory Use.** Permanent outdoor dining and seating shall be conducted as an accessory use to a legally established eating and drinking establishment located on Public Right-of-Way immediately adjacent to the tenant space.

E. **License Agreement.** A license agreement for outdoor dining and seating on the Public Right-of-Way shall be approved in a form required by the City.

F. **Barriers.** If barriers are provided, they shall be in the manner required by the City.

G. **Enclosure.** Awnings or umbrellas may be used in conjunction with a sidewalk café, but there shall be no permanent enclosure around the dining and seating area. Awnings shall be adequately secured, without attachment to the Public Right-of-Way, and shall comply with the Building Code adopted by the City and any applicable design guidelines.

H. **Fixtures.** The furnishings of the interior of the outdoor dining and seating shall consist only of movable tables, chairs, umbrellas, planters, and other portable fixtures deemed appropriate by City Staff. Lighting fixtures may be permanently affixed onto the exterior front of the principal building with property permits.

I. **Compliance with Design Guidelines.** Outdoor dining and seating shall comply with all applicable adopted design standards and guidelines, including, but not limited to:

1. The Citywide Sidewalk Dining Guidelines;
2. The Sidewalk Dining Standards for the Third Street Promenade; and

3. The Sidewalk Dining Standards for Ocean Avenue.

The Planning Director or designee may promulgate guidelines, which may include, but are not limited to, eligible uses and sites, outdoor dining configuration, design standards, and operational standards to implement the provisions of this Chapter. No person shall fail to comply with any such regulation.

J. **Refuse Storage Area.** No structure or enclosure to accommodate the storage of trash or garbage shall be erected or placed on, adjacent to, or separate from the sidewalk café on the public sidewalk or Public Right-of-Way. Sidewalk dining and seating areas shall remain clear of litter at all times.

K. **Hours of Operation.** The hours of operation of the outdoor dining and seating shall be limited to the hours of operation of the associated restaurant, other eating and drinking establishment, or commercial use.

L. **Parking.** Parking shall not be required for outdoor dining and seating on sidewalks permitted pursuant to this Section.

SECTION 7. Santa Monica Municipal Code Section 9.37.090 is hereby amended to read as follows:

9.37.090 Expiration and Extension

A. **Expiration.** The decision-maker, in the granting of any permit, may specify a time, consistent with the purposes of the use and necessary to safeguard the public safety, health and welfare, within which the proposed use must be undertaken and actively and continuously pursued. Projects with a permit with a specific time within which the proposed use must be undertaken and actively and continuously pursued that were (i) issued and active as of March 13, 2020; (ii) issued between March 13, 2020 and December 31, 2022; or (iii) issued pursuant to a complete application that was submitted

between March 13, 2020 and December 31, 2022 shall be extended for a period of two years. If no time period is specified, any permit granted under this Ordinance shall automatically expire if it is not exercised or extended within the time limits listed below:

1. ***Permits for 100% Affordable Housing and Certain Affordable Mixed-Use Residential Projects.*** For 100% affordable housing projects, or mixed-use residential projects where housing units comprise at least 75 percent of the floor area of the project, and the housing project has received City, State or Federal funding or is comprised of units at least 50 percent of which are deed-restricted to be affordable to low income households and the remainder of which are deed-restricted to be affordable to low or moderate income households:

a. Except as provided in subparagraph b, below, within 3 years of the effective date, or if located in the Coastal Zone, 3½ years from the effective date.

b. Notwithstanding paragraph (a), within 5 years of the effective date, or if located in the Coastal Zone, 5½ years from the effective date, for projects with a permit:

(i) Issued and active as of March 13, 2020;

(ii) Issued between March 13, 2020 and December 31, 2022; or

(iii) Issued pursuant to a complete application submitted between March 13, 2020 and December 31, 2022.

2. ***All Other Permits.*** For projects that do not qualify as affordable housing or mixed-use in paragraph (1) above:

a. Except as provided in subparagraph (b), below, within two years of the effective date, or if located in the Coastal Zone, 2½ years of the effective date.

b. Notwithstanding paragraph (a), within 4 years of the effective date, or if located in the Coastal Zone, 4½ years from the effective date for projects with a permit:

(i) Issued and active as of March 13, 2020;

(ii) Issued between March 13, 2020 and December 31, 2022; or

(iii) Issued pursuant to a complete application that was submitted between March 13, 2020 and December 31, 2022.

B. **Exercise of Rights.** A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the site unless the permit is granted in conjunction with approval of new construction.

1. **New Construction.** If a permit is granted in conjunction with approval of new construction, issuance of a building permit shall constitute exercise of rights; provided, however, that, unless otherwise specified as a condition of project approval, the permit shall expire if:

a. The building permit expires;

b. Final inspection is not completed or Certificate of Occupancy issued within the time specified as a condition of project approval; or

c. The rights granted under the permit for the use of the building are not exercised within one year following the earliest to occur of the following: issuance of a Certificate of Occupancy; or if no Certificate of Occupancy is required, the last required final inspection for the new construction.

C. **Extensions.**

1. ***First Time Extension.*** The Director shall approve an extension of any permit or approval granted under this Ordinance upon receipt of a written application with the required fee prior to expiration of the permit for the time periods listed below.

a. Projects with Residential Uses: one-year extension.

b. Nonresidential Projects: 6-month extension.

No extension may be requested earlier than 6 months prior to the expiration of the permit. The Director may grant a second time extension for projects involving a City-Designated Historic Resource if such extension is necessary due to the complexity of planning for and developing the project. Notwithstanding the foregoing, an extension may be requested at any time at least 30 days prior to the extension of a permit (i) issued and still active as of March 13, 2020; (ii) issued between March 13, 2020 and December 31, 2022; or (iii) issued pursuant to a complete application submitted between March 13, 2020 and December 31, 2022.

2. ***Other Extensions.*** The Planning Commission may approve a further extension of any permit or approval granted under this Ordinance upon receipt of a written application with the required fee at least one month prior to and no more than 6 months prior to expiration of the permit. Such extension request shall be processed in the same manner and for the same fee as a new permit. The Planning Commission may grant an extension request for good cause, and may consider in this review, subject to any vested rights, the extent to which the project is consistent with current development standards and policies, whether the project is consistent in principal with the goals, objectives, policies, land uses, and programs specified in the adopted General Plan, conditions

surrounding the project site and whether the project will adversely affect the public health, safety and general welfare.

SECTION 8. Santa Monica Municipal Code Section 9.38.020 is hereby amended to read as follows.

9.38.020 Applicability

Zoning Conformance Review is required for the following permits, licenses, or uses to ensure compliance with all provisions of this Chapter:

- A. Business license for any initiation of a use pursuant to Chapter 6.04.
- B. Home occupations subject to the provisions of Section 9.31.160.
- C. Outdoor dining and other commercial uses subject to the provisions of Sections 9.31.199 and 9.31.200.
- D. Alcoholic beverage sales subject to the provisions of Section 9.31.040(D) and (E).
- E. Zoning compliance letters explaining the City's land use regulations and permit information typically prepared in the context of a pending property sale or transaction.
- F. Other circumstances deemed appropriate by the Director.


SECTION 9. Any provision of the Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 10. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed

this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 11. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

DocuSigned by:

61C02D0CAE84432...

DOUGLAS SLOAN
City Attorney

Approved and adopted this 11th day of April, 2023.

DocuSigned by:

Gleam Davis

8FE4004DAD0B40B...

Gleam Davis, Mayor

State of California)
County of Los Angeles) ss.
City of Santa Monica)

I, Maria Dacanay, Acting City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2741 (CCS) had its introduction on March 14, 2023 and was adopted at the Santa Monica City Council meeting held on April 11, 2023, by the following vote:

AYES: Councilmembers Brock, de la Torre, Torosis, Zwick
 Mayor Davis, Mayor Pro Tem Negrete

NOES: None

ABSENT: Councilmember Parra

ATTEST:

DocuSigned by:

Maria Dacanay

BE7475A2249542C...

Maria Dacanay, Acting City Clerk

4/24/2023

Date

A summary of Ordinance No. 2741 (CCS) was duly published pursuant to California Government Code Section 40806.