



September 18, 2025

**TO: Oliver Chi, Santa Monica City Manager**

**CC: Santa Monica City Council**

**SMRR ANALYSIS OF CURRENT AHPP PILOT PROGRAM**

**I. INTRODUCTION AND SUMMARY**

As SMRR stated (in part) in its June 10, 2025 letter to City Council (italics in original):

We are writing to express the support of Santa Monicans for Renters’ Rights (“SMRR”) for development of a *pilot program* to allow greater flexibility in how market-rate housing projects contribute to the creation of deed-restricted affordable housing units in Santa Monica *in order to create more affordable housing* than that which otherwise will occur under the existing requirements of the State Density Bonus Law (“SDBL”) and Santa Monica’s Affordable Housing Production Program (“AHPP”). . . . The City then should present its proposal and supporting analysis to the relevant Commissions and the public well in advance of any City Council adoption of the proposed pilot program. If properly designed and justified, the City Council then should authorize a true pilot program of limited size to test in the real world the assumptions underlying the supporting analysis.

At the August 12, 2025 City Council meeting, SMRR expressed its deep concern that an AHPP pilot program had been agendized for that meeting, before there had been a meaningful opportunity for SMRR and other members of the public to review and comment on the proposed pilot terms. City Council nevertheless adopted the pilot program to proceed for up to 1000 units selected on a first-come-first served basis. But the City Council also directed that the matter return at the September 30, 2025 City Council meeting for consideration of potential amendments to the program.

Staff advises that after that meeting, the City received the following applications (and stopped accepting new applications):

Attachment: Written Comments [Revision 1] (7403 : Ordinance to Extend the Off-Site Affordable Housing Pilot Program (AHPP))

Project Address (ENT)	Date of Prior Approval	Expiration Date of Prior Approval <sup>1</sup>	Total Units	# of Previously Approved Market Rate Units	# of Previously Approved On-Site Affordable Units	Link to Previously Approved Administrative Approval (AA) Determination	Link to Previously Approved Plans/Specifications	AHPP Pilot Program Application Submittal Date	# of Revised Market Rate Units	Pilot Program Option Chosen <sup>2</sup>	Option 1 Off-Site Property	Option 1 # of Off-Site Affordable Units	Option 3 Project SF	Option 3 Estimated In-Lieu Fee	Prev Appl Project Check \$
1902 Wilshire (23ENT-0156)	8/8/2024	8/8/2026 (+2 years)	140	126	14	<a href="#">1902 Wilshire, STOA Approved Plans</a>	<a href="#">1902 Wilshire, STOA Approved Plans</a>	8/19/2025	140	1	1333 7 <sup>th</sup> St*	14	N/A	-	6
1527 Lincoln (23ENT-0161)	8/16/2024	8/16/2026 (+2 years)	210	189	21	<a href="#">1527 Lincoln, STOA Approved Plans</a>	<a href="#">1527 Lincoln, STOA Approved Plans</a>	8/19/2025	210	1	1143-1145 25 <sup>th</sup> St (2 parcels)	21	N/A	-	6
2501 Wilshire (23ENT-0173)	8/19/2024	8/19/2026 (+2 years)	170	153	17	<a href="#">2501 Wilshire, STOA Approved Plans</a>	<a href="#">2501 Wilshire, STOA Approved Plans</a>	8/19/2025	170	1	1333 7 <sup>th</sup> St*	17	N/A	-	6
2025-2037 Wilshire (23ENT-0178)	12/12/2024	12/12/2026 (+2 years)	150	135	15	<a href="#">2025 Wilshire, STOA Approved Plans</a>	<a href="#">2025 Wilshire, STOA Approved Plans</a>	8/19/2025	150	1	1333 7 <sup>th</sup> St*	15	N/A	-	6
1931 Wilshire (24ENT-0183)	7/31/2025	7/31/2027	260	234	26	<a href="#">1931 Wilshire, STOA Approved Plans</a>	<a href="#">1931 Wilshire, STOA Approved Plans</a>	8/19/2025	260	1	1143-1145 25 <sup>th</sup> St (2 parcels)	26	N/A	-	Not s
2906 Santa Monica (20ENT-0311)	9/17/2021	09/17/2025 (+2 years)	88	79	9	<a href="#">2906 Santa Monica, STOA Approved Plans</a>	<a href="#">2906 Santa Monica, STOA Approved Plans</a>	8/20/2025	88	3	N/A	-	51,189 sf	\$2,247,708.99	5
<b>Total</b>			<b>1,018</b>	<b>916</b>	<b>102</b>				<b>1,018</b>			<b>93</b>			

<sup>1</sup> Approvals issued prior to January 6, 2025 are extended for an additional period of 2 years as indicated pursuant to Section 9.37.090(A)(1)(c).

<sup>2</sup> Options 1= Off-site location + gap financing; 2 = Substantial rehabilitation; 3 = in-lieu fee payment

\*1333 7<sup>th</sup> Street was previously approved 4/5/23 for a 100% affordable housing project with 38 affordable units [22ENT-0161] to satisfy the AHPP obligations of 1527 Lincoln Blvd [22ENT-0037] (21 units) and 528 Arizona Avenue [22ENT-0028] (17 units). 1527 Lincoln will now satisfy the AHPP obligations of 1527 Lincoln Blvd [22ENT-0037] (21 units) and 528 Arizona Avenue [22ENT-0028] (17 units). Therefore, the affordable units obligation on 1333 7th St no longer exists, and Applicant has withdrawn these 3 entitled projects: 22ENT-0161, 22ENT-0037, and 22ENT-0028.

2025 Wilshire needs correction in STOA (which in error indicates October 12 2026)

SMRR now has completed its review of the AHPP pilot program’s offsite option and in-lieu fee option (the only two options selected by the initial pilot program applicants). Based on that review, SMRR believes that the current terms of the pilot program do not properly serve the goal of creating more affordable housing. However, SMRR also believes that with appropriate improvements, the pilot program could serve that goal—resulting in a win-win for the City and developers—and therefore should move forward under those improved terms. In particular:

1. With respect to the offsite option, the current pilot program terms impose too great a risk that the offsite affordable housing project (“OAP”) will not be built for a very long time. This both undermines one of the potential value propositions of the pilot (delivery of currently frozen affordable units sooner), and increases the financial risk to the City (due to increases in construction costs over time outpacing any potential escalator on the amount that must be deposited into escrow and/or the rate of interest earned on the escrowed funds after deposit). To mitigate this risk, the pilot program should be amended to require the developer to meet various milestones along the path to commencement of construction of the OAP (e.g. hiring professionals to prepare plans for the OAP, submitting them for approval by the City, applying for tax credits, hiring contractors, etc.). Any step that is supposed to be completed under the timeline before the time the developer seeks the Certificates of Occupancy (“COOs”) for the market rate project (“MRP”) should have to be completed before the COOs for the MRP are issued. And, with respect to any step that is supposed to be taken after the COOs for the MRP in fact are issued, there should be a financial penalty for failing to timely take those steps.

Note that this would not undermine the financial certainty that Staff told the City Council at the August 12, 2025 meeting is required by the developers to move forward at this time with their projects. This is because the foregoing proposals do not impose any penalty for things that are beyond the developers’ reasonable control, such as either the failure of the California Tax Credit Allocation Committee (“CTCAC”) to grant a properly submitted tax credit application, or escalations in the cost of construction while the OAP is in the pre-development phase.

2. Also with respect to the offsite option, the current pilot program terms impose serious financial risk to the City. This is for a variety of reasons, including that the \$150k per unit “gap financing amount” appears significantly lower than what it will take today to complete

Attachment: Written Comments [Revision 1] (7403 : Ordinance to Extend the Off-Site Affordable Housing Pilot Program (AHPP))

the OAP even with 4% tax credit financing, and that this inadequacy will only grow over time if construction costs rise faster than 5% cap on pre-deposit escalation of the amount and then faster than the interest that can be collected on the escrow until construction begins (just as they have done over the past five years).

In particular, whatever merit the mode of analysis Staff applied to prior City funded affordable housing projects may or may not have for the question at hand, application of that same methodology to much more recent data points indicates that a much higher gap funding amount will be required (a minimum of \$240k). These data points include the 4% tax credit application for the Venice Community Housing Corporation (“VCHC”) project on 20th Street that was approved by CTCAC in August of 2024; the pro forma shared by Hollywood Community Housing Corporation (“HCHC”) with City Staff to support the revisions to the 14th Street public land and 4% tax credits project that City Council approved in December of 2024; and the 9% tax credit application for the HCHC Euclid Street public land project that was approved by CTCAC in June of 2025, and then resubmitted by HCHC in July 2025 after the original tax credit award was declined due to uncertainty generated by the CEQA lawsuit over the project.

Moreover, the HR&A analysis of the single pro forma presented to it by a developer does not appear to provide credible support for the \$150k. First, the pro forma assumes no parking. While HR&A asserted that this is allowed, parking is being provided at the MRPs, and parking has been provided to varying degrees at all prior City-funded affordable housing projects (apparently depending on populations to be served and extent of ground floor retail). City Council was not asked to make a determination that the pilot OAPs will have no parking, and did not do so. Second, the unit sizes used in the pro forma—while satisfying CTCAC minimums—are substantially smaller than the minimums for inclusionary units that the pilot program ordinance incorporates as the minimums for the pilot OAPs. Third, the pro forma assumes no prevailing wages. But the only time the gap financing amount matters is when the developer fails to build the project and the land and money revert to the City (or its designee). Such a developer “default” seems the most likely scenario given (i) the likelihood that the gap financing deposit will not cover all of the required gap financing and (ii) Staff’s report at the August 12, 2025 City Council meeting that the developers want cost certainty (which means they do not intend to cover any further gap should it arise down the road). Although SMRR cannot offer and is not offering any legal opinions or advice, it would be surprising if the City has a legal opinion that prevailing wages will not have to be paid under those circumstances, and it would be shocking if the City had a legal opinion that prevailing wages would not have to be paid if the City had to contribute additional gap financing.

Furthermore, the fact that the ENR Building Cost Index – Los Angeles rose by 50% in the last 5 years illustrates the risk of cost increases outrunning either the capped at 5% gross up until time of deposit into escrow, or the interest rate available on any escrow.

To mitigate this financial risk, the first step is to insist that participants in the pilot program agree to pay the GS tax or its equivalent upon sale, whether or not the tax remains applicable to such a sale at the time of the sale. A provision similar to this was included in the recent amendment to the development agreement with RAND. Given the various past and continuing efforts to undermine Measure GS through local or Statewide initiatives and/or through legislation in

Sacramento, such a provision should be included in this pilot program. Once again, this would not undermine the economics for the developers as it was announced at the August 12, 2025 City Council meeting that one developer was urging adoption of the pilot and pointed out that doing so would lead to a large payment of GS taxes upon sale of its projects in 2030. Assurance of receipt of the GS taxes helps to mitigate the financial risks discussed above, and without such assurance the value proposition for this pilot from an affordable housing point of view evaporates.

Given the statement by Staff at the August 12, 2025 City Council meeting that the developers view certainty of funding commitment a key benefit of the pilot program, the additional step to mitigate these financial risks is to increase the required initial deposit into escrow. One possibility SMRR would consider acceptable—assuming it could be done logistically and legally—would be to effectively allow some (or, if truly justified economically, potentially even all) of the additional amount (i.e., above the \$150k) the City requires the developers to deposit into the escrow to constitute a prepayment of (or in some other way a credit against) the subsequent GS tax.

One other source of financial risk in the pilot program as currently drafted is its release of all of the security (i.e., the land purchase option and the deposited escrow funds) upon commencement of construction of the OAP. Given the City's past experience with Craig Jones (which led to imposition of the requirement that COOs for an OAP must be issued prior to COOs for the associated MRP)—and given the financial woes experienced by NMS—prudence in light of history requires some continuing security until the OAP is complete. Staff is better position to determine whether that continuing security should be a continued option and construction escrow, completion bonding and/or something else.

3. Another risk posed by the pilot offsite option is that it assumes the pilot OAPs will obtain 4% Low Income Housing Tax Credits ("LIHTCs"), without which the pilot OAPs will not be built. At present the competitiveness of the pilot OAPs for an award of these tax credits is unknown. Also unknown, at least to the public (which has not seen the responses to the Notice of Availability issued on June 30, 2025 for Bergamot, 4<sup>th</sup> & 5<sup>th</sup> and Arizona, and Parking Structure 1), is the full extent to which 4% LIHTCs are needed to create the affordable housing on public land that the City committed to in the 2021-2028 Housing Element, and therefore the risk of delaying those projects if they have to compete with pilot OAPs for those tax credits. To date that risk has been mitigated by limiting the pilot to 1000 units, which in turn has limited the pilot OAPs to two ~48 unit projects. But if Staff can demonstrate that expansion of the pilot program will not delay or otherwise put at risk the affordable housing on public land to which the City committed in the Housing element, and can demonstrate that expansion needs to happen immediately if the City is to meet its 6<sup>th</sup> Cycle RHNA market-rate housing target and/or respond adequately to its current fiscal distress, then SMRR could support the expansion of the pilot program (assuming it first incorporates SMRR's recommendations for improvements to the program) to include all already approved projects in the downtown. These downtown projects have the greatest revenue generating potential and pose the least risk of disruption to existing neighborhoods. If, but only if, participating downtown projects do not include at least the additional 800 market rate units likely needed—in addition to the 1000 market-rate units already included in the initial pilot, as well as the market rate units already completed or in construction

outside the pilot program—to assure the City will meet its current RHNA market-rate housing target, then already approved projects outside the downtown could be included as well in the expanded pilot until the 800 additional market-rate housing unit requirement is met.

4. A final risk posed by the pilot offsite option is the expiration of the affordability covenants on the OAPs in 75 years. The City should avoid this risk by insisting upon an option to purchase the OAPs at the end of the 75 year period for a *de minimis* price. This change will not impact the developers’ economic calculus, but will help assure the City’s affordable housing goals will continue to be served both now and in the future.

5. With respect to the in-lieu fee option, the figure used in the pilot needs to be raised. The in-lieu fee chosen—the “base unit fee” from S.M.M.C. § 9.64.070.A—never was meant to represent the cost of creating an affordable housing unit. Rather, it was the amount calculated by HR&A long ago as part of a nexus study calculating the fraction of an additional affordable housing unit that needed to be added to the City housing stock in order to house the additional low income households needed to provide additional low wage workers to meet the increased services demands created by the new City residents in each new 5 unit project. This has no conceptual relationship to paying a fee in-lieu of including affordable units in a project in order to obtain a local density bonus, instead of building those affordable housing units either onsite or offsite. Nor has the “base unit fee” escalated over the past 20 years in a manner realistically tied to the actual increase in the cost of developing affordable housing units.

The City instead should develop a realistic in-lieu fee tied to the actual cost of developing affordable housing units in 100% affordable housing projects, multiplied by the number of inclusionary affordable units the MRPs are no longer providing. This could potentially be a gap financing figure when the cost of land and creating the manager’s units is included, but it would have to be adjusted upward to take account of the delay from when the in-lieu fee would be paid to when the substitute affordable housing project would be built (including due to the risk of competition for tax credits), as well as other risks. Once a realistic figure is established, then the City can adjust it downward if *but only if* there is some reason to encourage developers to pay fees, rather than use the pilot offsite option, as part of the City’s overall plan to advance its affordable housing goals. No such case has been made to date.

## II. SMRR REVIEW OF THE AHPP PILOT’S OFFSITE OPTION

### A. Background

State density bonus law provides developers with greater density in exchange for affordable units, BUT it requires that those affordable units be inclusionary units that are *onsite* at the market rate project (“MRP”).

Santa Monica’s AHPP program already provides an offsite affordable option. BUT that option requires 5% *more* affordable units be provided offsite than are required onsite, AND does *not* provide the developer with the additional density onsite that the State allows.

Developers have asserted that their already approved MRPs—which all use the State density bonus law—are infeasible under current market conditions (high interest rates, tariff issues, construction labor issues, Measure GS, etc.).

In response, and at City Council direction, Staff proposed a new offsite option for projects with unexpired approvals that have not yet pulled building permits<sup>1</sup> whereby market-rate developers can move all of their inclusionary units offsite<sup>2</sup> AND obtain same density in their MRPs as otherwise would have been permitted under State density bonus law<sup>3</sup> (including by re-entitling the already approved projects by 12/31/26 to take advantage of additional density bonuses not yet in State law when initial entitlements for the projects were obtained<sup>4</sup>), so long as they satisfy the following conditions:

1. The OAP used to satisfy a developers' AHPP obligation for an MRP must comply with these criteria:

(a) The number of offsite affordable units the developer must provide is equal to 15% of base MRP, plus whatever additional percent of the base MRP the developer agreed to provide—if it did so—in order to receive the additional 50% State density bonus under Gov. Code § 65915(v).<sup>5</sup> Fractional unit obligations are handled in accordance with S.M.M.C. § 9.64.060.B;<sup>6</sup>

(b) Affordability is governed by S.M.M.C. § 9.64.060.B (“The off-site affordable housing units shall be affordable to 80% income households or lower.”);<sup>7</sup>

(c) The unit mix may not include studios,<sup>8</sup> and otherwise must satisfy S.M.M.C. § 9.64.050.E.2 (“The unit mix percentage for affordable two- and three-bedroom housing units shall be equal to or greater than the unit mix percentage for the corresponding market rate units.”);<sup>9</sup>

<sup>1</sup> See S.M.M.C. § 9.64.065.B; 8/12/25 Staff Slide “Clarifying Changes To Proposed Ordinance”. The adopted Ordinance, incorporating the Staff’s “Clarifying Changes”, is available at <https://www.santamonica.gov/media/Document%20Library/Topic%20Explainers/Planning%20Resources/AHPP%20Off-site%20Affordable%20Pilot%20Ordinance%202824.pdf>.

<sup>2</sup> See S.M.M.C. § 9.64.065.D.

<sup>3</sup> See S.M.M.C. § 9.64.065.G.

<sup>4</sup> See S.M.M.C. § 9.64.065.B.

<sup>5</sup> See S.M.M.C. § 9.64.065.H.

<sup>6</sup> See S.M.M.C. § 9.64.065.D.1.

<sup>7</sup> See S.M.M.C. § 9.64.065.D.1.

<sup>8</sup> See S.M.M.C. § 9.64.065.D.7.

<sup>9</sup> See S.M.M.C. § 9.64.065.D.3; 8/12/25 Staff Slide “Clarifying Changes To Proposed Ordinance”.

(d) The minimum size of the units must satisfy S.M.M.C. § 9.64.050.E.4 (“An affordable housing unit shall have a minimum total floor area, depending upon the number of bedrooms provided, of no less than the following: 0 bedrooms 500 square feet[;] 1 bedroom 600 square feet[;] 2 bedrooms 850 square feet[;] 3 bedrooms 1,020 square feet[; and] 4 bedrooms 1,200 square feet”);<sup>10</sup>

(e) The minimum occupancy must satisfy S.M.M.C. § 9.64.050.E.5;<sup>11</sup>

(f) There must be a 75 year affordability covenant;<sup>12</sup>

(g) An approved non-profit must own (in whole or part) and operate the OAP.<sup>13</sup>

2. Prior to obtaining building permit for an MRP *not* in the Coastal Zone, the developer must:

(a) Identify land for the OAP and satisfy the City that the land is environmentally sound;<sup>14</sup>

(b) Identify the MRP(s) using the OAP to satisfy their obligations under the AHPP, and identify all the units that will be in the OAP (presumably to allow City to verify that the number and types of units satisfy the pilot AHPP requirements described above).<sup>15</sup>

(c) Identify and enter into a contract with a City approved non-profit to own (in whole or part) and operate the OAP;<sup>16</sup>

(d) Provide a title report demonstrating that the option agreement (described below) and the affordability covenant (described above) will not be behind any other lien on the property;<sup>17</sup>

<sup>10</sup> See S.M.M.C. § 9.64.065.D.3; 8/12/25 Staff Slide “Clarifying Changes To Proposed Ordinance”.

<sup>11</sup> See S.M.M.C. § 9.64.065.D.3; 8/12/25 Staff Slide “Clarifying Changes To Proposed Ordinance”.

<sup>12</sup> See S.M.M.C. § 9.64.065.A.2.

<sup>13</sup> See S.M.M.C. §§ 9.64.065.D.2.b.

<sup>14</sup> See S.M.M.C. §§ 9.64.065.D.2.a, 5.a.i, 5.a.iii; *see also* S.M.M.C. §§ 9.64.060.D-E, 9.64.065.D.2.a (incorporated portions require demonstrate to City site control and that the site not be in the prohibition area (i.e., Pico)).

<sup>15</sup> See S.M.M.C. §§ 9.64.065.D.5.a.i.

<sup>16</sup> See S.M.M.C. §§ 9.64.065.D.5.a.ii.

<sup>17</sup> See S.M.M.C. §§ 9.64.065.D.6.d.

(e) Record an option for the City (or, at the City’s election, for a non-profit) to acquire the property for \$100 in the event the developer does not pull a building permit for the OAP—and commence construction activities for the OAP—within 4 years from issuance of the building permits for MRP (with the City having the right but not the obligation to extend this period to 5 years). The option becomes void if a building permit is pulled for the OAP, and construction activities commence for the OAP, within the required time period;<sup>18</sup>

(f) Record the affordability covenants;<sup>19</sup>

(g) Deposit into an interest-bearing escrow the “gap financing amount” of \$150k per offsite unit (adjusted each year following the effective date of the pilot program ordinance by the percentage increase in the ENR Building Cost Index – Los Angeles, but the adjustment cannot exceed an annual increase of 5% (although it is unclear whether this limit applies individually each year, or cumulatively across all years prior to the deposit)).<sup>20</sup>

[Note: Developers must satisfy these same requirements before pulling building permits for MRPs that *are* in the Coastal zone *except* that (a) deadline for placing the “gap financing amount” into escrow, and recording the option, is after Coastal Commission has approved an amendment to the Coastal Development Permit allowing the relocation of the affordable units to an off-site property (without other material changes to that permit) and (b) the time-limit for pulling a building permit and commencing construction of the OAP is 18 months (or 30 months if the City grants a 12 month extension) following the approval of the Coastal Development Permit amendment.<sup>21</sup>]

This pilot offsite option improves the economics for the market-rate developers because (1) it allows them to convert the formerly inclusionary units onsite into market rate units, thereby increasing the cash flow from the MRPs, and (2) it allows them to use LIHTCs to help finance the OAPs. Indeed, according to the City Council discussion on August 12, 2025, one developer asserted that with the benefit of the pilot program it would be able to proceed with its projects and—if all its approved projects were included—pay a very large sum in GS taxes upon sale of the projects in 2030.

**B. SMRR Analysis Of Current Pilot Offsite Option And Proposed Improvements To That Option To Better Serve City Goals**

As set forth above, in order to improve the economics for already approved MRPs, the AHHP pilot program’s offsite option (1) allows the developer to obtain all the benefits of State density bonus law at the MRP without any onsite inclusionary units, (2) does not require 5% more affordable units offsite, (3) does not require that the OAP be completed prior to the issuance of

<sup>18</sup> See S.M.M.C. §§ 9.64.065.D.6.a.

<sup>19</sup> See S.M.M.C. §§ 9.64.065.D.6.c.

<sup>20</sup> See S.M.M.C. §§ 9.64.065.A.6, D.5.c; 8/12/25 Staff Slide “Clarifying Changes To Proposed Ordinance”.

<sup>21</sup> See S.M.M.C. §§ 9.64.065.D.5.b-c, D.6.

certificates of occupancy for the MRP, and (4) fixes the developer's financial obligations with respect to the offsite affordable housing at the time it pulls its building permits for the MRP. But as explained below, these provisions impose a very substantial risk that (1) the OAPs will not be built for a very long time, and (2) that the City will have to contribute additional gap financing in order to get the OAPs built. Consequently, the AHPP pilot program's offsite option should impose additional requirements to better manage these risks while still preserving the incentives for developers to utilize the pilot program.

### **1. The Current Pilot Offsite Option Should Be Changed To Better Manage The Timing Risks Associated With Creating The OAPs**

As currently written, *there are no adverse consequences* for a market-rate developer if the actual construction of the OAP does not begin for up to 4 years after building permits are pulled for the MRP (and the City can extend that period to 5 years). Indeed, even after that deadline passes, *there still are no adverse consequences* for the market-rate developer because all that happens is the developer forfeits land that would have no economic value to it anyway for at least 75 years while the land hosts the OAP, and the developer forfeits the gap financing amount that it deposited into escrow that likewise has no economic value to it anyway for at least 75 years because the developer would have had to spend that money anyway to construct the OAP.

SMRR believes this situation is unacceptable for at least two reasons. *First*, one of the purported value propositions for the City from the pilot program is that it will unfreeze the creation of the affordable housing units included in the approved MRPs (i.e., get them into service faster than would occur by simply waiting for economic conditions to change enough so that the approved MRPs—including their onsite inclusionary units—are built). That value proposition does not seem credible under the current terms of the pilot program.

*Second*, the longer it takes to begin construction on the OAPs, the greater the risk that escalations in construction costs will render insufficient the gap financing amount that the developers will deposit into escrow, and the greater the likely size of any such insufficiency. This is because, as explained in the discussion of financial risks in Part II.B.2.a at points 2-3, there is a very substantial risk that construction costs will rise faster than the pre-deposit escalation in the gap financing amount and/or the rate of interest paid on the escrowed amount. Thus delay in creating the OAPs imposes unnecessary additional financial risk on the City.

In order to mitigate these timing risks, the pilot program should be amended to require the market-rate developer (or its designee) to meet various milestones along the path to commencement of construction on the OAP (e.g. hiring professionals to prepare drawing and plans for the OAP, submitting them for approval by the City, applying for tax credits, hiring contractors, etc.). Any step that is supposed to be completed under the timeline before the time the market-rate developer actually seeks the COOs for the MRP should have to be completed before the COOs for the MRP are issued. And, with respect to any interim step that is supposed to be taken after the COOs for the MRP in fact are issued, there should be a financial penalty for failing to timely take those steps.

Note that the foregoing proposals do *not* undermine the financial certainty that Staff told the City Council at the August 12, 2025 meeting is required by the market-rate developers to move

forward at this time with their approved projects. This is because the foregoing proposals do not impose any penalty for things that are beyond the market-rate developers' reasonable control, such as either the failure of CTCAC to grant a properly submitted tax credit application, or escalations in the cost of construction while the OAP is in the pre-development phase.

**2. The Current Pilot Offsite Option Should Be Changed To Better Manage The Financial Risks Associated With Creating The OAPs**

**(a) *The Current Pilot Offsite Option Creates A Very Substantial Risk That The City Will Have To Provide Additional Gap Financing To The OAPs***

**1. *\$150k Per Unit Does Not Appear To Be A Credible Estimate Of The Gap Financing That Would Be Required Even If Construction On The OAPs Could Begin Today***

Under the terms of the pilot program, the “gap financing amount” that the developer must deposit into escrow is supposed to be “the amount of financing necessary to complete a 100% affordable housing project assuming that (a) the off-site affordable project will obtain a 4% federal Low-Income Housing Tax Credit and/or tax-exempt bond allocation; and (b) that there will be no land acquisition costs.”<sup>22</sup> But the \$150k per unit used in the pilot program as the current “gap financing amount” does not appear to satisfy this definition.

In particular, Staff based its conclusion that \$150k per unit was a reasonable estimate of the gap financing required based on two analyses; namely, (1) a Staff analysis of the amount of gap financing provided to the last six City-funded projects that have been completed, and (2) HR&A’s review of a pro forma for an offsite affordable project provided by a market-rate developer. But neither of these analyses appears to lend credible support to the \$150k figure.

*First*, Staff itself performed the following exercise:

<sup>22</sup> See S.M.M.C. § 9.64.065.A.6.

Santa Monica City Council Meeting August 12, 2025

## Gap Financing + Off Site Land

- \$150,000 Gap Financing + Land is based on the average of the Housing Trust Fund (HTF) Subsidy for the past six completed City-funded affordable housing development
  - HTF Subsidy less any Land Acquisition Costs
  - Applied 5% escalation per year
  - Average of \$158,781 per residence with escalations
  - Includes Prevailing Wages
  - HTF Subsidy (less land) ranged from \$99,470 to \$246,463 per residence with escalations

The detailed calculations summarized above—which Staff kindly provided after the August 12 City Council meeting—are as follows:

Affordable Housing Development	Development Name / Developer Name	Target Population	Total Residences	Unit Size / Mix				# of Total Bedrooms	Acquisition Year	Land Acquisition Cost	Total HTF Loan	HTF Loan Less Acquisition Costs	Per Residence		Per Bedroom		Additional Notes
				Studios	One-Bedrooms	Two-Bedrooms	Three-Bedrooms						Total Less Land / Unit	5% Escalation / Year Since Acquisition	Total Less Land / Bedroom	5% Escalation / Year Since Acquisition	
1820&1826 14th Street	Greenway Meadows / CCSM	Seniors	39		38	1		40	2017	\$ 7,800,000	\$ 10,570,940	\$ 2,770,940	\$ 71,050	\$ 99,470	\$ 69,274	\$ 96,983	
1445 & 1453 10th Street	Magnolia Villas / EAH	Seniors	40		39	1		41	2018	\$ 5,250,000	\$ 11,400,000	\$ 6,150,000	\$ 153,750	\$ 207,563	\$ 150,000	\$ 202,500	
2120 Lincoln Blvd	Pacific Landing / CCSM	General Affordable	37		18	9	10	66	2018	\$ 5,250,000	\$ 12,005,733	\$ 6,755,733	\$ 182,587	\$ 246,493	\$ 102,360	\$ 138,165	Higher costs due to COVID imp construction started in early 21 significantly impacted, resultin construction costs.
1819 Pico	Brunson Terrace / CCSM	General Affordable	48		22	12	14	88	2019	\$ 8,311,866	\$ 13,348,057	\$ 5,036,191	\$ 104,921	\$ 136,397	\$ 57,229	\$ 74,398	
1834-1848 14th Street	Las Flores / CCSM	General Affordable	73		35	19	19	130	2019	\$ 11,960,877	\$ 20,772,615	\$ 8,811,738	\$ 120,709	\$ 156,921	\$ 67,783	\$ 88,117	
1413 Michigan Ave	The Laurel / EAH	Permanent Supportive Housing	58	57			1	58	2019	\$ 7,020,000	\$ 11,742,234	\$ 4,722,234	\$ 81,418	\$ 105,843	\$ 80,038	\$ 104,049	
<b>AVERAGE</b>													<b>\$ 119,072</b>	<b>\$ 158,781</b>	<b>\$ 87,780</b>	<b>\$ 117,372</b>	

Whatever the merits of this methodology for the question at hand may or may not be, all of the underlying data points used in the Staff analysis involve projects whose construction began during the period from June 2019 through August 2022.<sup>23</sup> But an application of this same methodology to more recent data points shows that the gap financing amount required for an affordable housing project in Santa Monica using tax credit financing is much higher than \$150k. The more recent data points are:

<sup>23</sup> Methodological issues include—but are not limited to—(1) the method of grossing up historical gap funding amounts to current requirements (using a flat 5% per year), and (2) including manager’s units in the per unit cost calculation (given that the offsite project pays a per affordable unit fee into escrow, but the resulting OAP also must include one or more manager’s units subsidized by the fee charged the affordable units for deposit into escrow.

Attachment: Written Comments [Revision 1] (7403 : Ordinance to Extend the Off-Site Affordable Housing Pilot Program (AHPP))

(a) The application of Venice Community Housing Corporation (“VCHC”) for 4% LIHTCs, in connection with a 78 unit project on 20th Street in Santa Monica, that was approved by the California Tax Credit Allocation Committee (“CTCAC”) in August of 2024.<sup>24</sup> 38 of the units are 1-bedroom units, 21 are 2-bedroom units, and 19 are 3-bedroom units. Because 38 of the units are for formerly homeless persons, and 20 are for persons with disabilities, the VCHC application includes significant reserves to cover the cost of providing supportive services to the residents of these units. Taking all of the non-tax credit public funds identified by VCHC to CTCAC as part of the permanent funding for this project, and deducting from that amount both the land costs and the reserves for the cost of providing supportive services, leaves public gap funding of \$228,437 per unit. Applying the Staff methodology of escalating the historical gap financing figure by 5% per year yields a gap financing amount of \$239,859 per unit as of August 2025. Applying instead the actual increase in the ENR Building Cost Index – Los Angeles from August 2024 to August 2025 (8.25%) yields a gap financing amount of \$247,274 per unit.<sup>25</sup>

(b) The application of Hollywood Community Housing Corporation (“HCHC”) for 9% LIHTCs, in connection with an 82 unit project on Euclid Street in Santa Monica, that was approved by the CTCAC in June of 2025 (an award that HCHC declined due to legal uncertainty caused by a CEQA lawsuit filed against the project), and that then was resubmitted to CTCAC (with updates) in July of 2025.<sup>26</sup> 19 of the units are 1-bedroom units, 15 are 2-bedroom units, and 14 are 3-bedroom units. There is no land cost for this project because it is to be built on

<sup>24</sup> See 8/6/2024 CTCAC Project Staff Report for VCHC’s 20th Street Apartments, available at <https://www.treasurer.ca.gov/ctcac/meeting/2024/0806/staff/CA-24-414.pdf>; 4/17/2024 Application to CTCAC by VCHC for 4% tax credits in connection with proposed 20th Street Apartments project, available at <https://www.treasurer.ca.gov/ctcac/2024/firstround/index.asp> (click on link for “CA-24-414 20th Street Apartments”). The project is a joint venture with Community Corporation of Santa Monica, and broke ground in April 2025. See Sharp, S., “Affordable housing breaks ground at 1640 20th Street in Santa Monica” Urbanize (Apr. 18, 2025), available at <https://la.urbanize.city/post/affordable-housing-breaks-ground-1640-20th-street-santa-monica>.

<sup>25</sup> If the gap funding is spread only among the 76 affordable units in this project (recognizing that the funds deposited into escrow under the pilot offsite option are charged against the affordable units only), then the gap financing figures are (a) \$234,448 as of August 2024, (b) \$246,171 as of August 2025 using Staff’s 5% per year escalator, and (c) \$253,781 as of August 2025 using the actual increase in the ENR Building Cost Index – Los Angeles from August 2024 to August 2025 (8.25%).

<sup>26</sup> See 6/18/2025 CTCAC Project Staff Report for HCHC’s Ollie Apartments, available at <https://www.treasurer.ca.gov/ctcac/meeting/2025/0618/binder.pdf> (pp. 57 et seq. of pdf); 3/17/2025 Application to CTCAC by HCHC for 9% tax credits in connection with proposed Ollie Apartments project, available at <https://www.treasurer.ca.gov/ctcac/2025/firstround/9percent/applications/index.asp> (click on link for “CA-25-003 Ollie Apartments”); 7/8/2025 Application to CTCAC by HCHC for 9% tax credits in connection with proposed Ollie Apartments project, available at <https://www.treasurer.ca.gov/ctcac/2025/secondround/9percent/applications/index.asp> (click on link for “CA-25-091 Ollie Apartments”).

City-owned land. The City also is to provide \$13.5 million from the Housing Trust Fund, which amounts to gap funding of \$281,250 per unit.<sup>27</sup>

(c) The undated pro forma provided by HCHC to Staff in connection with an 82 unit project on City-owned and acquired land at 14th Street in Santa Monica that will seek 4% LIHTCs. 80 of the units are 1-bedroom units, and 2 are 2-bedroom units. The City Council had directed in August of 2024 that such a project replace the original HCHC project City Council had approved for this site in March of 2024, and the City Council formally approved this revised project in December 2024. Taking all of the non-tax credit public funds identified by HCHC in the pro forma as part of the permanent funding for this project, and deducting from that amount the land costs, leaves public gap funding of \$198,927 per unit. Applying the Staff methodology of escalating the historical gap financing figure by 5% per year—and making the most conservative possible assumption that the HCHC pro forma is from December of 2024—yields a gap financing amount of \$205,558 per unit as of August 2025. Applying instead the actual increase in the ENR Building Cost Index – Los Angeles from December 2024 to August 2025 (5.8%) yields a gap financing amount of \$210,392 per unit.<sup>28</sup> But these figures almost certainly underestimate the gap financing that would be required as of August 2025 for the 14th Street project because (1) HCHC also provided to Staff an undated pro forma for the Euclid Street project at the same time as it provided the pro forma for this 14th Street project, (2) a comparison of HCHC’s July 2025 application to CTCAC for the Euclid Street project, with the HCHC pro forma provided to Staff for the Euclid Street project, shows that (a) construction costs are 11.1% higher on the CTCAC application, (b) construction loan interest and origination fees are 46.7% higher on the CTCAC application, and (c) the gap financing amount is 22.7% higher on the CTCAC application, and (3) in December of 2024, Staff requested—and City Council provided—authority for Staff to provide more gap financing, as needed, than the amounts indicated on HCHC’s Euclid and 14th Street project pro formas. In addition, the HCHC pro forma assumes 40 project-based Section 8 vouchers will be assigned to the project, and generate considerable additional cash flow that in turn supports a larger commercial loan. Staff has not indicated that it will be able to provide such support to the pilot OAPs, in which case the gap financing amount may well be higher for this reason as well.

Thus, even taking the most conservative approach, the average of these three much more recent real world data points indicates *the gap financing amount required under Staff’s methodology is at least \$242,222 per unit as of August 2025*—and it is likely that the amount is considerably higher.

<sup>27</sup> If the gap funding is spread only among the 47 affordable units in this project (recognizing that the funds deposited into escrow under the pilot offsite option are charged against the affordable units only), then the gap financing figure is \$287,234.

<sup>28</sup> If the gap funding is spread only among the 80 affordable units in this project (recognizing that the funds deposited into escrow under the pilot offsite option are charged against the affordable units only), then the gap financing figures are (a) \$203,900 as of December 2024 at the latest, (b) \$210,697 as of August 2025 using Staff’s 5% per year escalator, and (c) \$215,652 as of August 2025 using the actual increase in the ENR Building Cost Index – Los Angeles from August 2024 to August 2025 (8.25%).

Second, HR&A performed a review of a developer provided pro forma. That review was summarized at the August 12, 2025 City Council meeting as follows:

Santa Monica City Council Meeting August 12, 2025

## Analysis of Gap Financing Amount

- The proposed \$150K/unit subsidy gap was determined after HR&A Advisors reviewed a confidential pro forma for an affordable development that could pool affordable units required by multiple entitled developments.

**Development Program**

- Large R2 Lot.
- Land Area - 12,300.
- Gross Bldg. SF - 51,00; 7 stories.
- # Units - 72 (including one manager's unit.
- Parking - None.
- Unit Mix - 1BR & 2BR units (450-700 s.f.).
- Income Distribution - 10%@30%; 19%@50%; 19%@60%; 51%@70%.
- Implementation Period - 2 years entitlements & permits; 2 years construction.

6:35:14 / 8:54:55

Santa Monica City Council Meeting August 12, 2025

## Analysis of Gap Financing Amount

**Development Cost**

- Approx. \$40 million; \$550K/unit, not including land.

**Financing Sources**

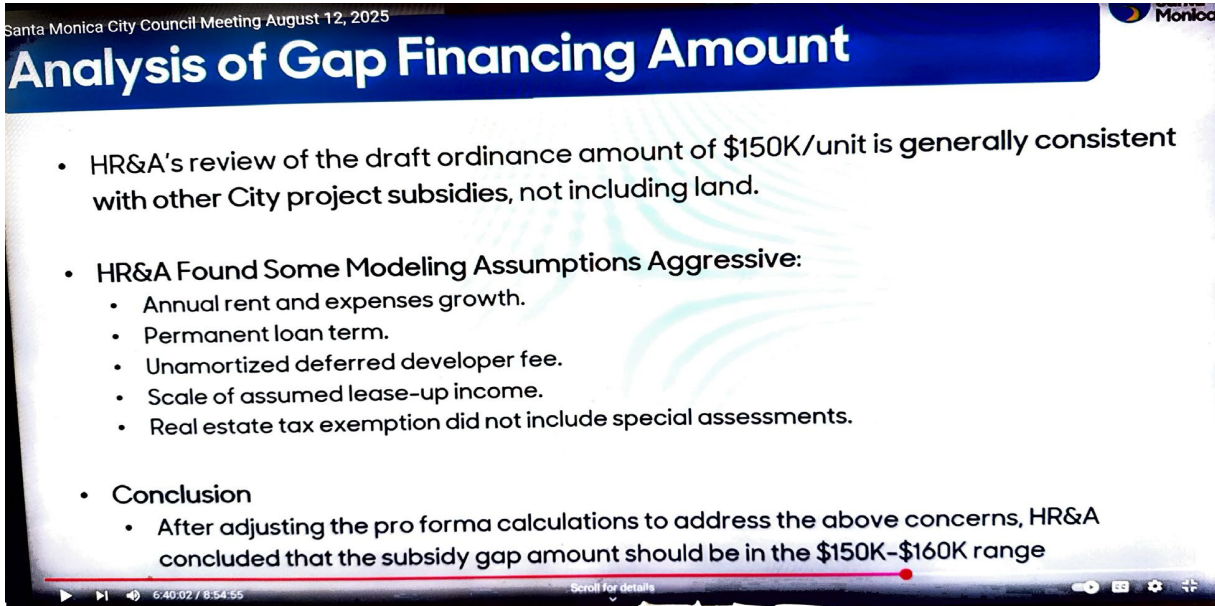
- Construction - 4% tax credit equity; bank loan; \$121/unit subsidy gap from private developer(s); lease-up income; General Partner equity.
- Permanent Sources - 4% tax credit equity; bank loan; \$121/unit subsidy gap from private developer(s); deferred developer fee; lease-up income; General Partner equity.

**Net Operating Income (Year 1 Stabilized)**

- Gross Potential Income - Approx. \$1.5 million; after vacancy allowance
- Annual Operating Cost - Approx. \$700K
- Net Operating Income - Approx. \$800K

6:37:44 / 8:54:55

Attachment: Written Comments [Revision 1] (7403 : Ordinance to Extend the Off-Site Affordable Housing Pilot Program (AHPP))



But, based on the information disclosed in these slides (no other information having been provided to the public), it does not appear that the HR&A analysis provides credible support for a \$150k per unit “gap financing amount” for the following reasons:

(a) The pro forma analyzed by HR&A does not include parking, which HR&A (Paul Silvern) identified at the August 12 meeting as a significant driver of cost savings. HR&A stated at the meeting that parking is not *legally* required. However, all of the market rate projects participating in the pilot provide parking (and so presumably would have provided parking to the inclusionary units had they remained onsite).<sup>29</sup> And every one of the affordable projects included in the Staff’s analysis—as well all of the more recent deed-restricted affordable housing

<sup>29</sup> The first five projects below applied for the pilot offsite option. The last project applied for the pilot in-lieu fee option. All of the data in this chart is from the approved plans for these projects that are linked to Status of Administrative Approvals chart available at [https://www.santamonica.gov/media/Document%20Library/Topic%20Explainers/Santa%20Monica's%20Housing%20Progress/Status%20of%20Administrative%20Approvals\\_9.9.25.pdf](https://www.santamonica.gov/media/Document%20Library/Topic%20Explainers/Santa%20Monica's%20Housing%20Progress/Status%20of%20Administrative%20Approvals_9.9.25.pdf).

PROJECT	UNITS	PARKING
1902 Wilshire (23ENT-0156)	140	168 residential, 22 commercial
1527 Lincoln (23ENT-0161)	210	279 residential
2501 Wilshire (23ENT-0173)	170	194 residential, 60 commercial
2025-2037 Wilshire (23ENT-0178)	150	184 residential, 27 commercial
1931 Wilshire (24ENT-0183)	260	308 residential, 18 commercial
2906 Santa Monica (20ENT-0311)	88	92 residential, 43 commercial

projects approved for construction in the City—include parking to varying degrees.<sup>30</sup> Furthermore, on the face of the slides, it is unclear whether HR&A analyzed whether the reduction in cost due to no parking would in fact reduce the gap funding otherwise required, would instead reduce the amount of tax credits for which the pilot OAPs could qualify due to their resultant lower cost basis, or some combination of both. Finally, and *most importantly*, a decision to eliminate all parking at the pilot OAPs was not called out in the Staff Report, and the City Council did not discuss—let alone vote on—whether or not to adopt a no-parking policy for pilot OAPs.

(b) The pro forma analyzed by HR&A assumed 1-bedroom units of 450 sq. ft., and 2-bedroom units of 700 sq. ft. This complies with CTCAC minimum unit sizes. However, under the pilot program—both as proposed by Staff and as adopted by the City Council—the OAPs are required to comply with S.M.M.C. § 9.64.050.E.2-.5.<sup>31</sup> And S.M.M.C. § 9.64.050.E.4 provides that “[a]n affordable housing unit shall have a minimum total floor area, depending upon the number of bedrooms provided, of no less than the following: . . . 1 bedroom 600 square feet[;] 2 bedrooms 850 square feet . . .”). In other words, the pro forma analyzed by HR&A underestimates the required size of every one of the 72 units by 150 sq. ft., or a total of 10,800 sq. ft. (which equates to an additional 20% of the “Gross Building SF” of 51,000 SF used on the pro forma HR&A analyzed).

<sup>30</sup> The data in this chart is taken from Urbanize articles about the first six completed projects, from the VCHC and HCHC tax credit applications to CTCAC for next two projects, from the HCHC pro forma for the next project, and from the presentation by EAH to City Council on 4/10/24 for the last project.

PROJECT	DEVELOPER	UNITS	POPULATION	PARKING
1820&1826 14 <sup>th</sup> St.	CCSM	39	Seniors	10 below grade
1445&1453 10 <sup>th</sup> St.	EAH	40	Seniors	10 at grade
2120 Lincoln Blvd.	CCSM	37	General	9 car garage
1819 Pico Blvd.	CCSM	48	General	49 below grade
1834-1848 14 <sup>th</sup> St.	CCSM	73	General	55 below grade
1413 Michigan Ave.	EAH	58	Supportive	9
20 <sup>th</sup> St. Apts.	VCHC	78	Supportive & General	26 covered
Euclid St. Apts.	HCHC	48	General	35 covered, 3 uncovered
14 <sup>th</sup> St. Apts.	HCHC	82	Seniors & Senior Supportive	42 at grade
4 <sup>th</sup> St. Apts.	EAH	122	Supportive & General	115 below grade (59R/56C)

<sup>31</sup> See S.M.M.C. § 9.64.065.D.3; 8/12/25 Staff Slide “Clarifying Changes To Proposed Ordinance”.

(c) *Most importantly*, the pro forma analyzed by HR&A assumes that prevailing wages will *not* be paid, which HR&A (Paul Silvern) identified at the August 12 meeting as another significant driver of cost savings. But the Staff Report for August 12, 2025, did not even reference—let alone contain—a legal analysis concluding that the web of relationships created by the pilot program do not trigger the State’s Prevailing Wage Law in the first instance. Moreover, the reason why the pilot program requires the market-rate developer to deposit the “gap financing amount” into escrow presumably is to provide assurance to the City that—*notwithstanding* the pilot program eliminating the AHPP requirement that COOs for OAPs must be issued before COOs for the MRPs—the pilot OAPs will actually get built even if the market-rate developers are either unable or unwilling to build them. While SMRR cannot offer legal advice to the City, and SMRR is not doing so, it would be surprising if the City has legal advice that the Prevailing Wage Law does not apply under those circumstances, and it would be shocking if the City has legal advice that the Prevailing Wage Law would not apply if the City has to provide additional gap financing to the OAPs. Therefore, whatever merit the assumption of no prevailing wage being paid might or might not have if the market-rate developers build the OAPs themselves without any further City funding, it does not seem to be a reasonable assumption to use when determining the “gap financing amount” the City should require the market-rate developers to deposit as security to assure completion of the OAPs. Indeed, given that the \$150k initial deposit does not appear adequate as explained above, given that the rate of growth in that amount both pre-deposit and post-deposit could well be less than the escalation in construction costs as explained below, and given that Staff reported at the August 12, 2025 City Council meeting that developers would not be willing to add to the escrow because cost-certainty is a major benefit of the pilot program, it seems that by far the most likely scenario is that the City will have to build the OAPs (either directly or through a non-profit affordable housing developer).

In short, the HR&A analysis of a single market-rate developer pro forma does not lend *credible* support to \$150k as the “gap financing amount” because the pro forma does not represent the type of OAP for which the “gap financing amount” is supposed to provide security. This is because (1) the HR&A analysis assumes no parking even though the MRPs in the pilot program all include parking, the affordable housing projects used in the Staff analysis all include parking to varying degrees, the more recent affordable housing projects under development in the City all include parking to varying degrees, and City Council neither discussed nor voted to remove all parking from the pilot OAPs; (2) the HR&A analysis assumes substantially smaller units than are required for units in the OAPs under the City Council adopted terms of the pilot program, and (3) the HR&A analysis assumes prevailing wages will not be paid when—absent some as yet not referenced or provided legal analysis—it seems that prevailing wages will have to be paid if the City if forced to use the escrowed funds to build the OAPs, which is by far the most likely scenario.

2. ***There Is A Substantial Risk That The “Gap Financing Amount” Will Grow Less Slowly Prior To Deposit Into Escrow Than The Rate At Which The Cost Of Building The OAPs Will Grow Prior To Deposit***

The pilot program provides that:

The gap financing amount shall be increased annually, commencing on the first anniversary from the effective date of this ordinance, by the last published annual average in the ENR Building Cost Index for the LA region, but shall not exceed an annual increase of five (5) percent. The gap financing amount should be calculated from the effective date of the ordinance until deposited into escrow in accordance with Section 9.64.065(D).

S.M.M.C. § 9.64.065.A.6. The pilot program contains no limit on how long the pre-deposit period may last (other than that it cannot last past the time the market-rate developer wants to pull building permits for the associated MRP, if it is not in the Coastal zone, or the time of an approved Coastal zone permit amendment if the MRP is in the Coastal zone).

This provision imposes a very substantial risk that—even if the \$150k figure was a credible estimate of the “gap financing amount” for projects built today (which it is not)—the growth in the “gap financing amount” prior to deposit into escrow would not have kept up with the growth in cost of building the OAPs. This is patent from the fact that *the ENR Building Cost Index – Los Angeles has grown 50% in the last five years.*<sup>32</sup>

This provision also contains a number of ambiguities which, depending upon how they are resolved, could further exacerbate the foregoing problem. First, it is unclear whether the gap financing amount is only “increased annually” (such that all change in the ENR Building Cost Index for the LA region occurring after the last annual adjustment but before the next annual adjustment is simply ignored), or is calculated using the change in that index “from the effective date of the ordinance until deposited into escrow”. If it is the former, that further exacerbates the risk that the gap financing amount will not have grown as fast prior to deposit as the costs to build the OAPs have grown prior to deposit. Second, it is unclear whether the 5% annual cap on growth is applied each year (such that the increase in any year cannot exceed 5% even if in a prior year the increase was less than 5%), or whether it is applied cumulatively (such that the average annual increase cannot exceed 5%, although any individual annual increase can do so when there was less than a 5% increase in one or more prior years). If the former, this too further exacerbates the risk that the gap financing amount will not have grown as fast prior to deposit as the costs to build the OAPs have grown prior to deposit.

3. ***There Is A Substantial Risk That The “Gap Financing Amount” Will Grow Less Slowly After Deposit Into Escrow Than The Rate At Which The Cost Of Building The OAPs Will Grow After Deposit Into Escrow***

The pilot program provides that the gap financing amount will be deposited into an interest-bearing escrow account.<sup>33</sup> Under the terms of the pilot program, for MRPs located outside the coastal zone, this escrow can last up to four years (five if the City grants a 1-year extension).<sup>34</sup>

<sup>32</sup> This index is available (after paying a subscription fee) at [https://www.enr.com/economics/historical\\_indices/losangeles](https://www.enr.com/economics/historical_indices/losangeles).

<sup>33</sup> See S.M.M.C. § 9.64.065.D.5.c.

<sup>34</sup> See S.M.M.C. § 9.64.065.D.5.c.ii.

And if those funds are needed to build the OAPs after a failure by the market-rate developer to do so, it could be a substantial additional period before construction of the OAPs actually begins.

Staff has not yet advised what interest rate an account of this type can earn today. However, a general review of bank interest rates indicates that this interest rate on the escrow deposit would not have come close to covering the 50% increase in the ENR Building Cost Index – Los Angeles over the last five years (and may well not even have covered the 5% annual increase that the pilot program would have required pre-deposit).

4. **The Release Of All Security Upon The Commencement Of Construction Of The OAP Creates Risk For The City**

The pilot program releases both the City’s option on the land—and all escrowed funds—upon the *commencement* of construction of an OAP (pulling building permits and beginning construction activity).<sup>35</sup> No security is retained to assure completion of the OAP, however. Given the City’s prior experience with Craig Jones<sup>36</sup> (which led to the pre-pilot AHPP offsite requirement that COOs for an MRP could not issue prior to the issuance of COOs for the associated OAP)—and the financial woes of NMS<sup>37</sup>—the risk posed by this pre-completion release of all security is patent.

(b) ***SMRR Proposed Changes To The Pilot Offsite Option To Mitigate The Financial Risks It Poses To The City***

SMRR believes four changes are required to properly mitigate the financial risks to the City posed by the pilot offsite option.

*First*, the City should require any developer utilizing the program to sign a written agreement that it will pay the amount of the GS tax upon sale for use in accordance with Measure GS, whether or not the GS tax is in place at the time of sale. A similar (but not identical) provision was included in the recent development agreement amendment that the City negotiated with RAND Corporation.<sup>38</sup>

The GS tax has been under assault locally through an initiative circulated in 2024 (which was withdrawn, but could return), by proposed legislation in Sacramento (which was withdrawn in

<sup>35</sup> See S.M.M.C. §§ 9.64.065.D.5.c.ii-iii, .6.a.

<sup>36</sup> See “Developer skips out on affordable housing”, Santa Monica Daily Press (Jun. 21, 2010), available at <https://smdp.com/news/developer-skips-out-on-affordable-housing/>.

<sup>37</sup> See Hall, M. “Lawsuits undermine Neil Shekhter’s once grand real estate empire”, Santa Monica Daily Press (Mar. 15, 2024), available at <https://smdp.com/news/lawsuits-undermine-neil-shekhters-once-grand-real-estate-empire/>.

<sup>38</sup> See “Amendment No. 2 To Development Agreement By And Between City Of Santa Monica And The RAND Corporation \_\_\_\_\_, 2025” at Section 7.2, available as part of Attachment C to Item 12.A on the City Council’s July 29, 2025 Agenda, available at [https://santamonicacityca.iqm2.com/Citizens/Detail\\_Meeting.aspx?ID=1467](https://santamonicacityca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1467).

favor of an L.A. City only statute (which was then itself withdrawn), but could return), and by a Statewide ballot measure (which was held ineligible for the ballot by the California Supreme Court in 2024, but is about to go into circulation again for 2026). Assurance that the GS tax or its equivalent will in fact be received by the City would provide significant mitigation of the financial risks identified above. Moreover, the City should not be taking on financial risk through the offsite option in order to improve the economics of the market-rate developers sufficiently for them to proceed even with the GS tax—as they have advised they can do—only to set up a potential windfall for the developers if changes are made to remove the GS tax.

*Second*, the “gap financing amount” should be increased to a realistic level (i.e., a level that takes into account that \$150k is inadequate, and that the pre-deposit and post-deposit rates of increase can be less than the increase in the cost of construction of the OAPs). SMRR recognizes that this proposal—unlike all of the others—changes the financial calculus for the market-rate developers. Accordingly, SMRR is open to the idea that some (or, if economically justified, potentially even all) of the increased deposit (i.e., the amount above \$150k)—if actually spent creating the OAPs—would be treated by the City as some form of credit against subsequently paid GS tax. Given that the City lacks the power to reduce the amount subsequently paid in GS taxes, some form of rebate program would have to be developed to create this economic effect for the market-rate developers.

*Third*, as explained in more detail in Part II.B.1 above, imposing interim milestones toward development of the OAPs is needed to shorten the time between deposit of the gap financing amount into escrow and actual construction of the OAPs.

*Fourth*, real security for completion of the OAPs must continue past the time building permits are pulled and construction begins. The City is better positioned than SMRR to determine whether this continuing security should be a continued option and construction escrow, a requirement of completion bonding, and/or some other form of security.

### **3. Management Of The Risks Posed By Competition For Tax Credits**

The pilot offsite option assumes that the OAPs will obtain 4% LIHTCs, without which the OAPs will not be built. But the tax credits available to projects in Santa Monica are not unlimited, as all tax credit programs are oversubscribed. Data is not yet available regarding the competitiveness of the OAPs contemplated by the pilot offsite option, something that this pilot program will test.

Nor does the public yet have data on the extent to which these same tax credits will be required to fulfill the City’s public land commitments for affordable housing under the Housing Element. The public knows that HCHC’s 82 unit project on 14<sup>th</sup> Street plans to seek 4% tax credits (although the timing apparently depends upon when it can obtain other State funding it included in its pro forma). But the public does not know what has been received in response to the June 30, 2025 Notice of Availability for Bergamot, 4th & 5th and Arizona, and Parking Garage 1—

although Staff presumably already has seen any responses and can enlighten the public and City Council on this score.<sup>39</sup>

To date the pilot offsite program has mitigated these risks by limited the pilot to 1000 units. As a result, only two OAPs are being considered—one for 46 affordable units at 1333 7<sup>th</sup> Street and one for 47 affordable units at 1143-1145 25<sup>th</sup> Street.<sup>40</sup>

Depending upon whether—and if so, to what extent—the responses to the Notice of Availability indicate the need for those public land projects to obtain 4% LIHTCs (i.e., depending upon whether and to what extent expanding the pilot would create undesirable competition for such tax credits between the public land projects and the pilot OAPs)—and assuming that the need to meet the City’s RHNA market-rate housing target and/or to respond adequately to the City’s current fiscal distress precludes waiting for additional information regarding the tax credit competitiveness of the already contemplated pilot OAPs on 7<sup>th</sup> Street and 25<sup>th</sup> Street (and other uncertainties posed by the pilot offsite option)—SMRR could be open to expanding the pilot program (so long as it first is revised as recommended in this analysis). In particular, SMRR believes that if these conditions are met, then all approved projects in the downtown should be allowed to participate in an expanded pilot because (1) they have the highest revenue generating potential at a time when the City is facing fiscal distress, and (2) they pose the least risk of disruption to the existing City neighborhoods. If the already approved downtown projects that choose to participate in the expanded pilot—when combined with the original pilot projects, as well as the market-rate units already completed or in construction—put the City in a position to meet its RHNA market-rate housing target, then that should be the extent of any pilot expansion. If, on the other hand, the downtown projects electing to participate in an expanded pilot by a deadline for them to apply do *not* put the City in a position to meet its RHNA market-rate housing target, then SMRR would consider allowing projects outside the downtown to participate in the expanded pilot up to whatever number of additional market rate units are needed to assure Santa Monica’s RHNA market-rate housing target is met.

In other words, given that (1) the City’s 6<sup>th</sup> RHNA cycle market-rate housing target is 2,727 units, (2) the annual progress reports submitted by Santa Monica to HCD for the first three years of this 6<sup>th</sup> Housing Element Cycle show that Santa Monica issued building permits for 899 market rate units, and some additional units undoubtedly have pulled building permits during this fourth year, and (3) the original pilot involves 1018 market rate units, another 800 market rate units are needed to assure (to the extent reasonable) that Santa Monica meets its RHNA market-rate target during the 6<sup>th</sup> Housing Element Cycle. If the already approved downtown projects that choose to participate in an expanded pilot program either meet or exceed this 800 unit figure, then that should be the extent of the pilot expansion. If those participating downtown projects do not meet this 800 unit figure, then additional projects outside the downtown should

<sup>39</sup> See June 30, 2025 City of Santa Monica Notice of Availability/Offer to Lease Surplus Property, available at <https://www.santamonica.gov/media/Housing/City%20of%20Santa%20Monica%20-%20SLA%20NOA%20to%20Affordable%20Housing%20Developers.pdf>.

<sup>40</sup> See Chart of Pilot Applications prepared by Staff and included in Part I above.

be allowed to participate in an expanded pilot to the extent necessary to reach a total of 800 additional market rate units in an expanded pilot program.

**4. Management Of The Risk Posed By 75 Year Affordability Covenants**

As noted in Part II.A above, the pilot offsite program requires 75 year affordability covenants. But as we are seeing today with the expiration of 55 year affordability covenants, the expiration of such covenants imposes the risk of losing affordable housing units in the future. Given that the potential to reacquire the OAPs 75 years into the future does not play any role in the investment decisions of market-rate developers (or those who invest in their projects), the City should insist that it have the option to acquire the pilot program OAPs for a *de minimis* amount upon expiration of the affordability covenants.

**III. SMRR REVIEW OF THE AHPP PILOT’S IN-LIEU FEE OPTION**

**A. Background**

S.M.M.C. § 9.64.065.F provides:

**F. In Lieu Fee Option for Off-Site Housing (without land provided).**

1. Notwithstanding Section 9.64.070, an applicant for a multiple-unit project may satisfy the affordable housing obligation in Chapter 9.64 by paying an in-lieu fee based on the following formula:

**(Base Unit Fee per Square Foot) x (total square feet of the residential floor area in the multi-unit project)<sup>41</sup>**

2. For purposes of this Section, the City's base unit fee per square foot shall be established pursuant to Section 9.64.070 by resolution of the City Council. Commencing on July 1, 2026, and on July 1st of each fiscal year thereafter, the City's base unit fee per square foot shall be adjusted based on changes in construction costs and land costs.

3. The affordable housing fee shall be paid prior to issuance of a building permit for any multiple-unit project utilizing Section 9.64.065(F).

4. The City shall deposit any payment made pursuant to this Section 9.64.065(F) in a reserve account separate from the General Fund to be used only for

<sup>41</sup> As the August 12, 2025, Staff advised the Council that the residential floor area referenced is the residential floor area in the project *after* taking advantage of the local density bonus. But this should be made explicit if this approach is retained (notwithstanding SMRR’s objections described below) because the references to the in-lieu fee in S.M.M.C. §§ 9.64.065.H.1.c, .2.c, are made in the context of using the base project only to calculate the number of offsite units required.

development of affordable housing, administrative costs related to the production of this housing, substantial rehabilitation of existing affordable housing, a City sponsored program of rental subsidies for lower income Santa Monica residents, and monitoring and evaluation of this affordable housing production program.

**B. The Current Pilot Program Should Be Changed To Utilize An In-Lieu Fee Reasonably-Related To The Cost Of Creating Affordable Housing Units And To The City’s Overall Affordable Housing Plan**

**1. The “Base Unit Fee” Established Pursuant To Section 9.64.070 Is An Improperly Low In-Lieu Fee To Use For The Pilot Program**

The pilot program is using the “base unit fee” of S.M.M.C. § 9.64.070A, the fee already charged under the AHPP to multi-family projects of 2-5 units. However, the origin of the “base unit fee” is a 1998 *nexus* study by HR&A, which first calculated (1) the demand effect of new market rate housing on goods and services, and (2) the number of lower-income households (at that time 60% of AMI or below) needed to supply a portion of the lower-wage employees needed to service this demand. The nexus study then divided the cost to the City of creating a unit of housing affordable to such lower income households (assuming no other public subsidy) by the square footage of the typical market-rate multi-family project that HR&A used to establish the demand effect, and the result was deemed the “base unit fee”. The two key charts from the Executive Summary to that nexus study summarizing these calculations are:

**Table I-1  
DERIVATION OF LOW-INCOME WORKER HOUSEHOLD DEMAND RESULTING FROM  
TOTAL HOUSEHOLD CONSUMPTION EXPENDITURES IN  
FOUR PROTOTYPICAL 5-UNIT MARKET RATE MULTI-FAMILY DEVELOPMENTS,  
CITY OF SANTA MONICA**

Prototype	Per-Prototype Hhld. Income	Total Workers	Low-Income Workers	Low-Income Worker Hhlds
Apt -- Lower Cost Area	\$335,189	3 74	0 63	0 27
Apt -- Higher Cost Area	\$425,919	4 76	0 80	0 34
Condo -- Lower-Cost Area	\$387,681	4 33	0 73	0 31
Condo -- Higher-Cost Area	\$496,260	5 54	0 93	0 39
<b>AVERAGE</b>	<b>\$411,263</b>	<b>4 59</b>	<b>0 77</b>	<b>0 33</b>

Source: HR&A

Attachment: Written Comments [Revision 1] (7403 : Ordinance to Extend the Off-Site Affordable Housing Pilot Program (AHPP))

**Table I-2  
DERIVATION OF A DEVELOPMENT FEE TO OFFSET THE AFFORDABLE HOUSING DEMAND  
CAUSED BY TOTAL HOUSEHOLD CONSUMPTION EXPENDITURES  
IN FOUR PROTOTYPICAL 5-UNIT MARKET RATE MULTI-FAMILY DEVELOPMENTS,  
CITY OF SANTA MONICA**

Prototype	Per-Prototype Hhld. Income	Units of Low-income Housing Demand <sup>1</sup>	Total Fee Amount <sup>2</sup>	Fee Amount Per Gross Square Foot <sup>3</sup>
Apt -- Lower Cost Area	\$335,189	0 27	\$41,090	\$5 41
Apt -- Higher Cost Area	\$425,919	0 34	\$52,215	\$6.87
Condo -- Lower-Cost Area	\$387,681	0 31	\$47,525	\$6 26
Condo - Higher-Cost Area	\$496,260	0 39	\$60,835	\$8 01

<sup>1</sup> From Table I-1  
<sup>2</sup> Housing Demand x \$154,916 per unit (Crty's average subsidy gap)  
<sup>3</sup> Total Fee Amount divided by 7.595 gross square feet per typical market rate multi-family development

Source: HR&A

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What these charts show is that the “base unit fee” was supposed to represent the cost to create roughly one affordable housing unit for every 15 market rate units. By contrast, the inclusionary requirement in the single project that has elected to pay the pilot in lieu fee—measured against the total number of market rate units allowed under the pilot program—is one affordable housing units for every 9.78 units.

It appears than an update to the nexus study was completed by HR&A in July 2005 but, unlike the 1998 nexus study, it is not available online.<sup>43</sup> According to a May 2005 Staff Report (which includes preliminary updated calculations by HR&A), the methodology is essentially the same, but updated data is used, and the demand for workers earning up to moderate income was included in the updated analysis.<sup>44</sup>

<sup>42</sup> This 1998 HR&A Report is an attachment to a July 21, 1998 Staff Report entitled “Recommendation to Adopt Resolution Establishing Affordable Housing Base Fee”, available at <https://publicdocs.smgov.net/WebLink/DocView.aspx?id=2206828&searchid=89ab0638-0a04-461c-91a2-09ebf39869a6&dbid=0&repo=SMGOV>.

<sup>43</sup> The updated HR&A report was attached to a July 12, 2005 Staff Report entitled “Resolution to Increase the Affordable Housing Fee and Introduction and First Reading of an Ordinance Amending the Affordable Housing Production Program to Establish a Reduction or Waiver Provision of Chapter 9.56 and to Modify Affordable Housing Definitions and Consideration of Other Amendments to Provide for the Annual Adjustment of the Affordable Housing Fee and the Timing of the Affordable Housing Fee Calculation for a Particular Development”, but it is only available for inspection at the Clerk’s Office per a sheet in the online version, available at <https://publicdocs.smgov.net/WebLink/DocView.aspx?id=2211477&searchid=3a50ebaa-8472-47f7-afe7-e048020e099f&dbid=0&repo=SMGOV>.

<sup>44</sup> See May 10, 2005 Staff Report entitled “Strategies to Increase the City’s Supply of New Affordable Units” at pp. 5-6 & Attachments A-B, available at

The current value of the “base unit fee” is the result of an annual adjustment pursuant to a formula developed by HR&A—and adopted by City Council in 2006—in which median price change of condominium sales is used as a proxy for change in land cost, change in Engineering News Record’s Construction Cost Index – Los Angeles is used as a proxy for change in construction cost, and each of these is weighted by the average weight of land versus construction costs in two most recent City-funded affordable housing developments. The current “base unit fee” for apartments is \$43.91 per square foot.<sup>45</sup>

Under the AHPP pilot program, this figure is then multiplied by the residential floor area. Per the Staff chart included in Part I above, for the single project that has elected to pay the pilot in-lieu fee this works out to \$2.248 million—which equates to just under \$250k per each inclusionary unit that no longer is part of that project.

There are two fundamental problems with using the “base unit fee” to calculate an in-lieu fee for the pilot program. *First*, the “base unit fee” is intended as an impact fee based on the additional demand for deed-restricted affordable housing caused by 2-5 unit multi-family housing projects. This bears no conceptual relationship to the purpose of the AHPP pilot in-lieu fee, which is to obtain a reasonable financial contribution to the City’s affordable housing programs in exchange for granting a local density bonus equivalent to State density bonus without requiring the MRP to include any affordable housing units onsite or build any affordable housing units offsite.

*Second*, the “base unit fee” is far too low to satisfy the purpose of the pilot in-lieu fee. Part of this is due to the nature of the “base unit fee” calculation, as illustrated by the 1998 nexus study. But part of this is also due to the apparent failure of the annual increase methodology to keep up with the actual increases in the cost of constructing affordable housing over the last 20 years. This is evident from the fact that (1) this same methodology is used to gross up the “affordable housing unit development cost” pursuant to S.M.M.C. § 9.64.070.B, (2) the “affordable housing unit development cost”—developed by HR&A as part of the same nexus studies discussed above—is supposed to represent “the City’s total cost to develop a unit of affordable housing (i.e., land, construction, professional fees and other ‘soft’ costs and financing costs) minus the amount of construction loan that can be supported by the net operating income derived from operating a typical City-assisted affordable housing development,” without any other public

<https://publicdocs.smgov.net/WebLink/DocView.aspx?id=2211484&page=1&dbid=0&repo=SMGOV>.

<sup>45</sup> See Staff Memorandum entitled “Proposed FY 2024-25 Annual Automatic Adjustment for the Affordable Housing Unit Base Fee”, attachment c to Agenda Item 5.C for the City Council’s October 8, 2024 meeting, available at

[https://santamonicacityca.iqm2.com/Citizens/Detail\\_Meeting.aspx?ID=1416](https://santamonicacityca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1416).

subsidy,<sup>46</sup> and (c) the current “affordable housing unit development cost” is just \$460,747,<sup>47</sup> which is far below the actual cost to the City of developing an affordable housing unit when there is no other public subsidy.<sup>48</sup>

## 2. Developing A Proper Pilot In-Lieu Fee

The logical conceptual starting point for a proper pilot in-lieu fee is what it would cost the City to replace the foregone inclusionary units with units developed in a 100% affordable housing project, multiplied by the number of inclusionary units the developer no longer has to provide under the pilot program. While that could be the gap financing amount the City supplies to projects (including the cost of land and the cost of creating manager units), consideration would also have to be given to the delays between the time the in-lieu fee is paid and the time when an affordable housing construction would begin (a time frame likely to be lengthened given the increased competition for LIHTCs from both the pilot OAPs and public land OAPs), as well as other risks—i.e., the figure would have to be higher than current gap financing figures including the cost of land and creating manager units. This figure could be adjusted downward if the City had a particular need for cash to achieve its affordable housing goals that it cannot otherwise satisfy, and therefore wanted to incentivize participants in the pilot program to select the in-lieu fee option. But no such case has been made to date.

\* \* \*

Thank you for your consideration of SMRR’s views on this important matter. Please let us know if you have any questions or otherwise wish to discuss any of the foregoing.

<sup>46</sup> See Staff Memorandum entitled “Proposed FY 2024-25 Annual Automatic Adjustment for the Affordable Housing Unit Development Cost”, attachment d to Agenda Item 5.C for the City Council’s October 8, 2024 meeting, available at [https://santamonicacityca.iqm2.com/Citizens/Detail\\_Meeting.aspx?ID=1416](https://santamonicacityca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1416); May 10, 2005 Staff Report entitled “Strategies to Increase the City’s Supply of New Affordable Units” at pp. 5-6 & Attachments A-B, available at <https://publicdocs.smgov.net/WebLink/DocView.aspx?id=2211484&page=1&dbid=0&repo=SMGOV>; 1998 HR&A Report at 5, attached to July 21, 1998 Staff Report entitled “Recommendation to Adopt Resolution Establishing Affordable Housing Base Fee” at , available at <https://publicdocs.smgov.net/WebLink/DocView.aspx?id=2206828&searchid=89ab0638-0a04-461c-91a2-09ebf39869a6&dbid=0&repo=SMGOV>.

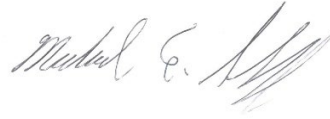
<sup>47</sup> See Staff Memorandum entitled “Proposed FY 2024-25 Annual Automatic Adjustment for the Affordable Housing Unit Development Cost”, attachment d to Agenda Item 5.C for the City Council’s October 8, 2024 meeting, available at [https://santamonicacityca.iqm2.com/Citizens/Detail\\_Meeting.aspx?ID=1416](https://santamonicacityca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1416).

<sup>48</sup> For just one example, the HCHC pro forma for the 14<sup>th</sup> Street project, which includes 80 senior 1-bedroom units, and two 2-bedroom manager units, indicates a per unit cost of ~\$780k per unit (including the value of the land, but excluding the permanent private loan supported by the rental income).

Sincerely,



Denny Zane  
Co-Chair, Santa Monica's for Renters' Rights



Mike Soloff  
Co-Chair, Santa Monica's for Renters' Rights

Attachment: Written Comments [Revision 1] (7403 : Ordinance to Extend the Off-Site Affordable Housing Pilot Program (AHPP))

# EXHIBIT B

Attachment: Written Comments [Revision 1] (7403 : Ordinance to Extend the Off-Site Affordable Housing Pilot Program (AHPP))

September 30, 2025

To: Santa Monica City Council

Re: **9.30.25 Agenda Item 11A—AHPP Offsite Pilot Program**

Dear Councilmembers:

On September 18, Santa Monicans for Renters' Rights sent to the City Manager and to each of you the attached memorandum analyzing the Offsite Option and the In-Lieu Fee Option in the AHPP pilot program adopted on August 12. These are the only two options for which applications have been received to date. SMRR's memorandum demonstrated that—as currently drafted—the Offsite Option exposes the City to substantial timing and financial risks with respect to creation of the offsite affordable housing, and makes a series of recommendations for mitigating those risks to acceptable levels. That memorandum further demonstrates that the particular in-lieu fee figure incorporated into the pilot had had no conceptual relevance to the issue at hand when first created, and that the updating of that original figure over the last 20 years had not kept pace with actual increased costs. It also explains how the City could approach constructing a conceptually relevant in-lieu fee. The memorandum further explains SMRR's views on the conditions for and the limits of an appropriate expansion of the pilot program.

In this cover letter, SMRR briefly responds to the comments provided to Council by Cyress Equity ("CE") regarding SMRR's recommendations to improve the offsite option, and regarding potential expansion of the pilot. SMRR also briefly responds to the Staff Report.

1. Offsite Option Timing Risk: CE does not dispute SMRR's suggestion that milestones be added for the offsite affordable project ("OAP") to assure timely progress is being made toward creation of the OAP. Indeed, CE offers some suggested milestones both for steps to obtain entitlements for the OAP, and for steps to obtain the tax credits without which the OPA will never be built.<sup>1</sup> Staff likewise offers some potential milestones for obtaining entitlements.<sup>2</sup>

<sup>1</sup> "Reasonable milestones would be (i) submission an entitlement package for the affordable project within 6 months of applying for the IZO, (ii) submission of a funding request to CDLAC and TCAC within 6 months of receiving building permits for the affordable project, and (iii) if funding is not initially awarded, funding requests must be resubmitted in every subsequent funding round that the project is eligible for. "

<sup>2</sup> "Prior to building permit for the first market rate project, require submittal of a complete entitlement application for the off-site affordable housing project[.]

Prior to Certificate of Occupancy for the market rate project, require that the plan check process for the off-site affordable housing project be completed. The City could also include a

**SMRR agrees with CE that the milestones should cover both obtaining entitlements, and obtaining tax credits. SMRR also believes that the milestones should include commencement of construction following entitlements and tax credits.**

What CE does object to is the imposition of consequences on the market rate developer if the OAP milestones are missed, suggesting instead a right of the City to replace the OAP developer.<sup>3</sup> Staff, on the other hand, proposes as possible consequences that (1) submission of entitlement package be a condition for the market rate project (“MRP”), (2) that completion of the plan check be a condition of the certificates of occupancy for the MRP (including a provision of priority for the OAP plan check to assure City does not cause delay), and/or (3) that the program should “[a]llow[] the City to exercise its option on the off-site property, draw down on the gap financing, and receive an assignment of architectural and construction plans for the off-site housing development early if the developer does not complete the plan check process within a certain timeline of pulling a building permit on the market rate project.” **SMRR supports adoption of Staff’s first two suggestions, absent some compelling showing that they are not practical. SMRR also supports Staff’s third suggestion (which appears to be the same as CE’s suggestion) for all other milestones (not just for plan check completion) IF BUT ONLY IF the financial risks of completing the OAP under these circumstances are properly mitigated (as discussed below). If those risks are not properly mitigated, then some other mechanism is needed to assure that tax credits and construction commencement milestones are met.**

2. Offsite Option Financial Risk: CE purports to dispute SMRR’s showing that the only two methodologies disclosed to the public for validating the \$150k gap financing amount—Staff’s analysis of the gap financing provided to prior completed City funded tax credit projects, and HR&A’s review of a confidential pro forma submitted (presumably by CE) for a tax credit project—are insufficient to validate that figure as sufficient. But CE’s response actually reinforces SMRR’s point. In particular, CE essentially repeats that HR&A found that an OAP with a certain mix of one and two bedroom units, with no parking and no payment of prevailing wages, today would involve a gap financing amount of ~\$150k. However, as explained in the SMRR memorandum, (1) Council has not yet said that the only type of OAP it wants built under the AHPP pilot is that specific type, (2) no one has shown that if the City does have to take the project away, that it does not trigger a prevailing wage requirement (which CE acknowledges would make the \$150k grossly inadequate), and (3) no one has shown that prevailing wages will have to be paid if the City has to provide additional gap financing (either because it turns out \$150k actually is not enough today, or because the limit on pre-escrow deposit of the gap financing amount to 5% per year and/or because the interest available in escrow is less than the increase in construction costs—both of which are very real risks when construction costs have risen 50% over the last five years). Thus, CE has not refuted SMRR’s showing of substantial financial risk to the City with respect to completion of the OAP.

provision for expedited, priority process of off-site affordable housing projects to ensure that delays are not attributable to the City.”

<sup>3</sup> “If milestones are not met, the City should have the option to redirect the land and funds in escrow to a different affordable partnership that can hit its milestones.”

CE also objects to SMRR’s two recommendations to mitigate this financial risk. First, CE states that SMRR recommended prepayment of the GS tax that will come due on sale of the market rate project. But SMRR did not recommend that. SMRR recommended that—just as the City recently required of RAND Corporation—the City should require pilot participants to agree that in the event the GS is not applicable to the sale of market rate project based on changes in the law, they still will pay the equivalent amount to the GS Homelessness Prevention and Affordable Housing Fund. This provides significant mitigation of the financial risks identified above, as the City will be assured of affordable housing funds if it becomes necessary to supply additional gap financing. And given that the City is acting to facilitate the market rate projects “penciling out” with the GS tax in place, there is no reason to allow the market rate developers to earn a windfall if various political efforts to limit the GS tax somehow succeed before the market rate projects are sold.

Second, CE asserts that SMRR recommended that the gap financing amount be increased to \$240k. But SMRR did not recommend that. SMRR merely showed that City Staff’s methodology using gap financing in prior City funded projects—if applied to more recent data—indicated a gap financing amount of at least \$240k (and probably more). The proper gap financing amount is for the City to establish, and depends upon the nature of the OAP City Council expects, the risks associated with increasing construction costs, and the risks of paying prevailing wages should the City have to exercise its options and/or add more gap financing.

Finally, CE does not dispute that—as currently written—the City loses its option on the land and the escrowed funds once construction of the OAP begins. CE states that SMRR said the escrow must continue, and objects to that as unnecessary given other security put in place at that point by persons other than the City. But SMRR never said that the escrow must continue. Rather, SMRR stated:

real security for completion of the OAPs must continue past the time building permits are pulled and construction begins. The City is better positioned than SMRR to determine whether this continuing security should be a continued option and construction escrow, a requirement of completion bonding, and/or some other form of security.

**In short, SMRR believes it is essential that the City require a commitment to pay into the Homelessness Prevention and Affordable Housing Fund the equivalent amount to the GS tax on the sale of the market rate project in the event the GS tax no longer applies at that time. The City also needs to provide more transparent and convincing support for the gap financing amount. Further, if the City can verify CE’s assertions of adequate security from other sources for completion of construction of the OAP once it begins, SMRR will be satisfied on that point.**

3. In-Lieu Fee Option: CE does not address the in-lieu fee option. Staff states that a new nexus study is required to alter the in-lieu fee for the pilot. **SMRR understands that nexus studies are required for impact fees / exactions that are based on mitigating costs imposed by a project. That is not what is at issue here—instead, this is about an alternative to satisfying the AHPP through onsite affordable units. Any in-lieu fee in this context should represent what it will take actually to produce through other means the affordable units that the developer otherwise would have had to produce onsite (with some credible plan as**

to how the City intends to otherwise create those units). Once that figure is known, it could be adjusted downward if the City wants to encourage payment of such fees in connection with a specific, immediate need for such funds to further concrete affordable housing plans.

4. Other Options: Staff has raised the possibility of extending the pilot program to include offsite moderate housing, and to allow some way of preserving affordable units at-risk of conversion to market rate units. **SMRR believes that the City should first concentrate on correcting deficiencies in the offsite option and the in-lieu fee option before looking at other changes (none of which have been sufficiently explained, with enough time for SMRR and other members of the public—or Council—to adequately evaluate). These suggestions should be tabled for now.**

5. Pilot Expansion: SMRR recommended that—if its other recommendations are adopted to improve that AHPP pilot, and if other conditions are met relating to City need to act immediately and City verification that it would not interfere with the recent public land Notices of Availability and responses received—the City could expand the pilot to all downtown approved projects or, if that does not put the City in a position to meet its market-rate target for the 6<sup>th</sup> RHNA Cycle, the additional units outside the downtown needed to put the City in that position. CE asserts that there is not a competition problem given the size of the 4% program, and that projects should be allowed to go forward outside downtown. **SMRR believes only Staff knows what is occurring with respect to the Notices of Availability and the responses, and therefore only Staff can provide the required assurance regarding competition for credits. The fact that there are many credits does not answer the question, given that the program is oversubscribed already. SMRR also believes that a pilot program logically is limited in scope. SMRR further believes the biggest financial benefit to the City is from more housing in the downtown.**

Thank you for considering our views on these important matters.

Sincerely,



Denny Zane  
Co-Chair, Santa Monicans for Renters' Rights



Mike Soloff  
Co-Chair, Santa Monicans for Renters' Rights