

**PLANNING COMMISSION OF MONTEREY PARK
AGENDA**

REGULAR MEETING

**NOTE THAT THESE MEETINGS WILL BE CONDUCTED PURSUANT TO SECTION 3
OF EXECUTIVE ORDER NO. N-29-20 ISSUED BY GOVERNOR NEWSOM ON
MARCH 17, 2020.**

**ACCORDINGLY, PLANNING COMMISSION MEMBERS WILL BE PROVIDED WITH
A MEETING LOGIN NUMBER AND CONFERENCE CALL NUMBER; THEY WILL
NOT BE PHYSICALLY PRESENT AT COUNCIL CHAMBERS.**

**PURSUANT TO THE GOVERNOR'S ORDER, THE PUBLIC MAY PROVIDE PUBLIC
COMMENT UTILIZING THE METHODS SET FORTH BELOW.**

**NOTE THAT CITY HALL IS CURRENTLY CLOSED TO THE PUBLIC. YOU WILL
NOT BE ADMITTED TO CITY HALL.**

**Tuesday
November 24, 2020
7:00 PM**

MISSION STATEMENT

**The mission of the City of Monterey Park is to provide excellent services
to enhance the quality of life for our entire community.**

Documents related to an Agenda item are available to the public in the Community and Economic Development Department – Planning Division located at 320 West Newmark Avenue, Monterey Park, CA 91754, during normal business hours and the City's website at www.montereypark.ca.gov/AgendaCenter/Planning-Commission-11.

PUBLIC COMMENTS ON AGENDA ITEMS

You may speak up to 5 minutes on Agenda item. You may combine up to 2 minutes of time with another person's speaking. No person may speak more than a total of 10 minutes. The Board Chair and Board Members may change the amount of time allowed for speakers.

Per the Americans with Disabilities Act, if you need special assistance to participate in this meeting please call City Hall at (626) 307-1359 for reasonable accommodation at least 24 hours before a meeting. Council Chambers are wheelchair accessible.

CALL TO ORDER

Chairperson

FLAG SALUTE

Chairperson

ROLL CALL

Eric Brossy De Dios, Ricky Choi, Theresa Amador, Tammy Sam, Dr. Kevin K. Lo

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

PUBLIC COMMUNICATIONS

In accordance with Executive Order No. N-29-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed in the following ways:

Participants are encouraged to join the meeting 15 minutes before the start of the meeting.

Public comment will be accepted via email to jmoquin@montereypark.ca.gov during the meeting, before the close of public comment, and read into the record during public comment, when feasible. We request that written communications be limited to not more than 50 words.

Public comment may be submitted via telephone during the meeting, before the close of public comment, by calling (888) 788-0099 or (877) 853-5247 and entering Zoom Meeting ID: **980 9964 3327** then press pound (#). When prompted to enter participation ID number press pound (#) again. If participants would like to make a public comment they will enter “*9” then the host will be notified and you will be in the rotation to make a public comment.

Important Disclaimer – When a participant calls in to join the meeting, their name and/or phone number will be visible to all participants. Note that all public meetings will be recorded.

[1.] PRESENTATIONS – None

[2.] CONSENT CALENDAR

2-A. APPROVAL OF MINUTES

It is recommended that the Planning Commission:

- (1) Approve the minutes from the regular meeting of May 12, 2020; and
- (2) Take such additional, related, action that may be desirable.

[3.] PUBLIC HEARING

3-A. RESOLUTION TO A PUBLIC HEARING TO CONSIDER ADOPTING A NEW POLICY IMPLEMENTING VEHICLE MILES TRAVELED (“VMT”) REPLACING THE LEVEL OF SERVICE (“LOS”) TO ANALYZE TRANSPORTATION IMPACTS (14 CALIFORNIA CODE OF REGULATIONS § 15064.3

It is recommended that the Planning Commission consider:

- (1) Opening the public hearing;
- (2) Receiving documentary and testimonial evidence;
- (3) Closing the public hearing;
- (4) Adopting the Resolution recommending approval; and
- (5) Taking such additional, related action that may be desirable.

California Environmental Quality Act (CEQA):

The Resolution is exempt from additional environmental review under the California Environmental Quality Act (Public Resources Code §§ 21000, et seq., “CEQA”) and CEQA Guidelines (14 California Code of Regulations §§ 15000, et seq.) because it establishes rules and procedures in compliance with California law; does not involve any commitment to a specific project that would result in a potentially significant physical impact on the environment; and constitutes a organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly the Resolution does not constitute a “project” that requires environmental review (see specifically, CEQA Guidelines §§ 15378(b)(2, 5) and 15308).

[4.] OLD BUSINESS - None

[5.] COMMISSION COMMUNICATIONS AND MATTERS

[6.] STAFF COMMUNICATIONS AND MATTERS

ADJOURN

Next regular scheduled meeting on December 8, 2020.

APPROVED BY:

Jason Moquin	
--------------	--

**UNOFFICIAL MINUTES
MONTEREY PARK PLANNING COMMISSION
REGULAR MEETING
MAY 12, 2020**

The Planning Commission of the City of Monterey Park held a regular meeting of the Board in the Council Chambers, located at 320 West Newmark Avenue in the City of Monterey Park, Tuesday, May 12, 2020 at 7:00 p.m.

CALL TO ORDER:

Chairperson Eric Brossy de Dios called the Planning Commission meeting to order at 7:00 p.m.

ROLL CALL:

Senior Planner Tewasart called the roll:

Board Members Present: Eric Brossy De Dios, Ricky Choi, Theresa Amador, Tammy Sam, and Dr. Kevin Lo

Board Members Absent: None

ALSO PRESENT: Natalie C. Karpeles, Deputy City Attorney, Mark A. McAvoy, Public Works Director/City Engineer/City Planner, and Samantha Tewasart, Senior Planner

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS: None

ORAL AND WRITTEN COMMUNICATIONS:

[1.] **PRESENTATIONS:** Swearing in of new Commissioners

[2.] **CONSENT CALENDAR:** None

2-A APPROVAL OF MINUTES

October 8, 2019

Action Taken: The Planning Commission approved the minutes from the regular meeting of October 8, 2019

Motion: Moved by Member Amador and seconded by Member Choi, motion carried by the following vote:

Ayes:	Commissioners: Brossy de Dios, Choi, and Amador
Noes:	Commissioners: None
Absent:	Commissioners: None
Abstain:	Commissioners: Sam and Lo

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

October 22, 2019

Action Taken: The Planning Commission approved the minutes from the regular meeting of October 22, 2019

Motion: Moved by Member Amador and seconded by Member Choi, motion carried by the following vote:

Ayes: Commissioners: Brossy de Dios, Choi, and Amador
Noes: Commissioners: None
Absent: Commissioners: None
Abstain: Commissioners: Sam and Lo

November 12, 2019

Action Taken: The Planning Commission approved the minutes from the regular meeting of November 12, 2019

Motion: Moved by Member Robinson and seconded by Member Salazar, motion carried by the following vote:

Ayes: Commissioners: Brossy de Dios, Choi, and Amador
Noes: Commissioners: None
Absent: Commissioners: None
Abstain: Commissioners: Sam and Lo

March 10, 2020

Action Taken: The Planning Commission approved the minutes from the regular meeting of March 10, 2020

Motion: Moved by Member Brossy de Dios and seconded by Member Amador, motion carried by the following vote:

Ayes: Commissioners: Brossy de Dios, Choi, and Amador
Noes: Commissioners: None
Absent: Commissioners: None
Abstain: Commissioners: Sam and Lo

[3.] PUBLIC HEARING:

3-A. RESOLUTION ESTABLISHING PROCEDURAL RULES FOR CONDUCTING PLANNING COMMISSION MEETINGS

Planner Tewasart provided a brief summary of the staff report.

Chairperson Brossy de Dios closed the public hearing.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

Speaker Gina Casillas stated that she opposes the rules for conducting the Planning Commission meeting. The rules are not consistent with the Public Resources Division 13. An opposition letter was provided to the Planning Commission.

Speaker Teresa Real Sebastian stated to consider for item 5.2 give warning first, item 7.3 participants are not required to give address, item 8.5 typo sentence structure, and item 8.7 deleted a substitute motion, need to analyze the items more. She inquired if this is in-lieu or changing procedurally how to conduct a meeting.

Speaker Raphael Casillas stated that it limits free speech; item 7.3 is vague and ambiguous; and inquired about rule 6.

Chairperson Brossy de Dios closed the public hearing.

Commissioner Amador asked the Deputy City Attorney to clarify some of the points that were brought up by the community speakers for clarification.

Attorney Karpeles stated that the rules of procedure before the Planning Commission are modeled after the rules of parliamentary procedures and also Rosenberg's Rule of Order, which superseded Robert's Rule of Order. These rules of procedure are also second to the Brown Act. The Brown Act will supersede any conflicting provisions and it is meant to be in tandem with the government code and what the Brown Act requires for public meetings. The rules of procedure have been taken from what the Brown Act, which has been codified by the government code, to provide for open meetings and public meetings in terms of transparency and those requirements.

Commissioner Sam stated that the Commission received an email stating that the project is not exempt from CEQA. Attorney Karpeles replied that this item is not a project as defined under CEQA and therefore is not subject review.

Chairperson Brossy de Dios stated that in the past three years there has not been previous protocol set to a vote to the Commission and inquired if there is a previous set of protocol that have been put in place. Attorney Karpeles replied that while the City Council has similar procedural rules which were last updated in 2013. The procedural rules that govern the City Council do not cover meetings held by a planning body and the municipal code allows the Planning Commission to adopt its own set of rules. The proposed procedures can be modified based on the deliberations of the Planning Commission, but they are meant to act as a format for these meetings secondary to the Brown Act.

Commissioner Lo inquired about the protocol from before. Chairperson Brossy de Dios replied not written as such. It was conducted by tradition, reference to Rosenberg's Rule of Order, and advice from legal Council in matters of parliamentary deliberation when necessary.

Action Taken: Motion to adopt **Resolution No. 02-20** approving establishment of procedural rules for conducting Planning Commission Meetings.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

Motion: Moved, by Commissioner Amador and seconded by Commissioner Choi, motion failed by the following vote:

Ayes: Commissioners: Brossy de Dios, Choi, Amador, Lo, and Sam
Noes: Commissioners: None
Absent: Commissioners: None
Abstain: Commissioners: None

**3-B. NOMINATING AND VOTING TO SELECT A CHAIR AND VICE-CHAIR
PURSUANT TO MONTEREY PARK MUNICIPAL CODE § 2.82.080**

Action Taken: The Planning Commission (1) appointed Commissioner Eric Brossy de Dios as the Chair pursuant to Monterey Park Municipal Code (MPMC) § 2.78.030; and (2) took additional, related, action that may be desirable.

Motion: Moved by Commissioner Lo and seconded by Commissioner, motion carried by the following vote:

Ayes: Commissioners: Brossy de Dios, Choi, Amador, Sam and Lo
Noes: Commissioners: None
Absent: Commissioners: None
Abstain: Commissioners: None

Action Taken: The Planning Commission (1) appointed Commissioner Ricky Choi as the Vice-Chair pursuant to Monterey Park Municipal Code (MPMC) § 2.78.030; and (2) took additional, related, action that may be desirable.

Motion: Moved by Commissioner Amador and seconded by Commissioner Choi, motion carried by the following vote:

Ayes: Commissioners: Brossy de Dios, Choi, Amador, Sam and Lo
Noes: Commissioners: None
Absent: Commissioners: None
Abstain: Commissioners: None

**4-A. CONDITIONAL USE PERMIT (CU-19-13) TO ALLOW THE CONSTRUCTION OF A
NEW RETAIL EATING ESTABLISHMENT WITH A DRIVE-THROUGH IN THE S-C
(SHOPPING CENTER) ZONE – 1970 SOUTH ATLANTIC BOULEVARD**

Planner Tewart provided a brief summary of the staff report.

Chairperson Brossy de Dios inquired why the item was being brought back to the Commission after consideration on March 10th. Attorney Karpeles replied that on March 10th it was a quorum of the Commission to consider the project, because three affirmative votes are required of the Commission and the motion to approve the resolution failed two to one. Pursuant to the City's codes a resolution of denial should have been brought back to the Commission for consideration and the resolution of denial would have confirmed the Commission's decision regarding this project. However, on March 11th a local emergency

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

was declared in the City and nonessential activities were canceled and certain deadlines were toll. On March 12th when the applicant filed their appeal, the appeal was premature because no resolution of denial had been approved by the Commission. Following the March 12th date, there were three City Council meetings, no Planning Commission meetings were held and the three Council meetings that were held included emergency related COVID-19 issues, certifying election results, and paneling a new City Council. The Planning Commission appointments did not conclude until May 7th. Under normal circumstances and processes, the deadline that are outlined in the municipal code would have ensured that there was due process and that the applicant's due process rights were preserved, which includes the ability to challenge an unfavorable decision. However, in light of the current circumstances and the fact that all these deadlines had passed, the applicant requested a new hearing. There is no resolution of denial on file and any event such a resolution would have brought this project before the Commission again. So all things considered, in order to ensure that due process is preserved, a rehearing before the Commission is considered appropriate.

Chairperson Brossy de Dios stated that even though the public hearing was close in the previous meeting and there was a vote, because there was no resolution of denial issued, the applicant has a right to resubmit and have it reconsidered. Attorney Karpeles replied that that is a correct understanding, but it does not cover everything that was taken into consideration in order to bring this item back before the Commission. In addition to the fact that there was no resolution of denial, the COVID-19 issue coupled with the emergency declaration in the City and the fact that the Commission had not been fully appointed. All these things were taken into consideration. Under normal circumstances, if there was no COVID, under normal circumstances what would have happened would have been the motion failed, a resolution of denial would have been brought back and the Commission would have held a public hearing on the resolution of denial. At that point, the Commission could have approved, denied, or modified the resolution of denial. But we are operating under unusual circumstances, so that is what brought us here today.

Commissioner Choi inquired if this Commission should have considered a resolution of denial. Attorney Karpeles replied that the applicant would have still had the opportunity to appeal. The item that we are trying to protect is the original due process. All things considered whatever happens at the outcome of this meeting, the applicant or any aggrieved party depending on the resolution can ultimately appeal to the City Council.

Commissioner Choi inquired why a traffic management plan was not asked to be produced before the conditional use permit. Director McAvoy replied that the inclusion of the condition was to be abundantly cautious. The traffic report was reviewed by engineering staff and there was no exception to the traffic report. However, it is possible that when the business opens it would be popular and have some periods where even though the maximum queue is accommodated on-site and does not impact Atlantic Boulevard, based on past experiences the condition would allow the applicant time to prepare something unique to the site. It was not necessary to have it before consideration because their traffic report does show that they accommodate the proposed maximum queue. It would be more of in the event that management would be required there would be something in place.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

Commissioner Choi stated that it could alleviate some of the concerns if that document was available.

Commissioner Lo inquired about the procedure to amend the code. Director McAvoy replied that the process would be a text amendment that staff would be bringing to the Commission. Staff is currently working with the City Attorney's Office on such an amendment for a few different items, such as setbacks, parking, and traffic standards. There are a few minor items that come up with most projects that we are working through, so based on that staff felt it appropriate to condition this project to be considered by the Commission and the estimated timeframe for that is this summer. Attorney Karpeles added that it would come in the form of a resolution showing the proposed language and will be deliberated on and changes can be proposed.

Commissioner Lo inquired if the changes that were to come even before the proposed project. Director McAvoy replied that the reason why it has not come is because staff was working on updating the General Plan land use element, which was approved by the City Council in December and placed on the ballot because it requires voter ratification. The ballot measure was not approved. However, had the land use element been approved it would have also required some additional changes to the zoning code, so staff held off on these minor text amendments just in case that land use element was approved. The idea was not to do it twice. Since the ballot measure was not approved, staff will be moving forward with the minor text amendments. These were considered by staff prior because as most projects in our built-out city come through staff review there are some common items that are barriers to redevelopment of existing smaller sites, including setbacks, parking standards and others, which will be moved forward shortly.

Commissioner Lo inquired why the setback is exactly 25 feet. Director McAvoy replied exactly. The standard for setbacks can be a bit arbitrary. There are requirements that go hand-in-hand. Setbacks are often related to safety, lot coverage for landscaping, floor area ratio, or to provide a buffer against adjacent uses that may be different in nature. There are a lot of considerations regarding setbacks. There isn't in the municipal code a lot of flexibility for staff to look at each setback a little differently, so a setback in this location may not make as much sense to have a setback in relations to Atlantic Boulevard or a wide sidewalk and parkway area as oppose to if this was adjacent to something else. So, those standards will be brought back for consideration.

Commissioner Choi inquired about the timeline. Director McAvoy replied July or August because staff has been working on this and there specific areas, setbacks and on-site parking standards. Otherwise, the conditions would not have been written the way it is and it will have to go to the City Council.

Chairperson Brossy de Dios inquired if there have been any substantial modifications to the application since the previous hearing. Planner Tewasart replied no.

Commissioner Choi inquired why a variance option was not entertained. Director McAvoy replied that that question did come up at the last Planning Commission meeting. Variances are taken seriously because they do run with the land and knowing that there would be text

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

amendments being proposed because of how the industry is changing and the applications that were being received, a variance option was not elected. Attorney Karpeles replied that a variance application is up to the discretion of the applicant and the applicant elected to undergo this separate process whereby there is a condition of a text amendment.

Commissioner Lo inquired if it would be quicker to apply for a variance. Attorney Karpeles replied not necessarily, the requirements for the granting of a variance is very technical.

Chairperson Brossy de Dios opened the public hearing.

Applicant, Kristen Roberts, 6800 Bishop Road, Plano, Texas 75024, provided a brief presentation and was available for questions.

Commissioner Sam inquired about the stacking study and numbers on the plans. The alleyway may realistically become an extension of the stacking, which may not be a terrible thing if this portion will only be used by the business. Engineer John Pollock with Kimley-Horn replied that technically the site can be accessed via the alley and frontage driveway on Atlantic. The cars shown on the site plan are not to scale with the spacing. The capacity of the queuing is based off of the total length which is 370 feet, which is at 22-foot spacing per car would accommodate what would roughly equate to 17 cars. The site plan does not quite have the cars to the 22-foot scale. The 29 trips are generated in the peak PM based off the ITE numbers, which is the required way to arrive at those numbers per the City's traffic study requirements. That is based off a table for restaurant drive-through use. The Laguna Hills, Orange and Riverside numbers were for the queuing and hard empirical counts were taken for the queuing.

Commissioner Sam inquired about the operating hours and comparables. Engineer Pollock replied that the queuing intervals that were taken were identified as peak windows at those locations. Applicant Roberts stated that all the restaurants have similar operating hours. Engineer Pollock stated that the level of service of E that was identified was for the alleyway heading westbound out of the alleyway to get onto Atlantic just to the south of the site and the reason for that delay is because that is looking at cars trying to wait to make a left trying to get across traffic. It is not the direct effect of actual traffic trying to get onto the streets.

Commissioner Sam inquired if a left is allowed there and recommended a right-turn only to prevent accidents and backups. Commissioner Sam inquired about sound, safety, and lighting. Applicant Roberts replied that the Police Department added a condition to require on-site security, the speakers will be turned down after a certain time, and the lighting will comply with city standards.

Commissioner Sam inquired if the EV space will be electrified. Engineer Pollock replied that per the current building code the conduit will be ran for the future installation, but the charging station will not be installed at this time. Director McAvoy stated that the project as submitted complies with the building code, as the applicant stated it requires a spot to be provided and a potential to charge it. Commissioner Sam stated that Cal Greens does not require a charger, but there are a lot of electric drivers in the city and it can be a great draw

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

to the business while customers are eating. Applicant Roberts stated that it will not be an issue to provide a charger and will check with their engineer. Commissioner Sam stated that there are rebates available and there may be no cost to the installer.

Commissioner Amador inquired if some considerations can be given to the hours of operation on Fridays and Saturdays, perhaps making it consistent with the other days of the week from 9:00 to 1:00. Applicant Roberts replied that that is acceptable, seven days a week. Commissioner Amador stated that she agreed with the right-turn only. Engineer Pollock replied that they are open to that suggestion for the site.

Planner Tewart stated that 2 written correspondences were received in support and 14 written correspondences were received in opposition and those have been provided to the Commission to review and consider.

Speaker Gina Casillas spoke in opposition to the project and submitted a written opposition letter that was provided to the Commission.

Speaker Teresa Real Sebastian spoke in opposition to the project due to concerns about the location being next to single-family homes and not in a shopping center.

Speaker Raphael Casillas spoke in opposition to the project and submitted a written opposition letter that was provided to the Commission

Speaker Alexandro Acevedo spoke in opposition to the project due to concerns about the traffic.

Speaker Scott Dumke spoke in opposition to the project due to concerns about traffic, health, and food options.

Speaker Heidi Dumke, spoke in opposition to the project and for the Commission to consider the needs of the community and not a business proposal coming from out of state by a corporation and expressed concerns about the location.

Chairperson Brossy de Dios closed the public hearing.

Commissioner Sam inquired about the fire lane. Director McAvoy replied that this project was reviewed by every department in the city, including the Fire Department and conditions were provided and the Fire Department's conditions were included. Conditions number 27 through 32 and that was not listed as a concern of the Fire Department. Commissioner Sam inquired if there is an alternative fire lane. Director McAvoy replied that the Fire Department when they review a project they review it against the adopted fire code and the fire code provides requirements regarding hydrant spacing and location. As long as they have access to a hydrant they run their hose in fighting a fire along a slope. While they send out an annual requirement to clear the brush to help lower fire risk they don't necessarily park in the alley to fight a fire. They fight it from wherever they need to station which along Atlantic Boulevard you would have the fire hydrants that they would be using and running their hoses. The alley itself would not be their primary operations. They would

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

fight from above from Bradshawe or from below off of Atlantic or within the alley wherever they would approach it. They did review the project and provided their comments.

Commissioner Amador inquired about condition number 32 regarding a fire lane. Director McAvoy replied that the fire department includes comments on proposals and that is a standard comment that they include where they require fire lanes to be marked. The alleyway was not designated by the fire department in their review as a fire lane for this project because of the narrowness of this site. In a typical commercial site you wouldn't generally have an alleyway in the back, so the fire fighting would occur from Atlantic Boulevard. When a site is deep enough, the fire department will call out on a site plan to have a fire lane in the rear of a building and this can be seen at the Market Place development. In this location, with the shallowness of the site it would not be required. Condition number 32 would not be applicable to the alleyway, but it is general language that they would include when you have a fire lane you would have to provide approved signs and include markings that say no parking.

Commissioner Amador inquired that several of the public speakers raised certain comments and if what the Commission approves is in compliance with all references they made to the legalese. Attorney Karpeles replied that the way the resolution is drafted and the evidence relied upon in preparation for the resolution have all been derived from the municipal code and has been reviewed the City Attorney's Office.

Commissioner Sam stated that noise and circulation should be further analyzed and a better vehicular circulation path.

Commissioner Lo stated that he is in agreement with the operating hours being a little too late and there should be a restricted right-turn only.

Commissioner Amador inquired if there are restrooms for the public or just for staff. Applicant Roberts replied for both. Commissioner Amador commended the applicant for being amenable to adjusting their hours.

Commissioner Choi stated that the property has been vacant for many years and there are a lot of vacancies in the property to the south. With the current pandemic, the way people eat will be changing. The city is built-out there are not many parcels for a drive-through. Commissioner Choi recommended adding a condition regarding the right-turn only. Commissioner Choi inquired about the existing noise environment on South Atlantic. Attorney Karpeles replied that before the Planning Commission is a quasi-judicial decision regarding approval of a conditional use permit. In order to approve a conditional use permit, findings must be made that are based on substantial evidence in the record and once that substantial evidence is applied, it is applied to particular sections of the municipal code. In this case the sections that govern conditional use permits generally and the section that covers drive-throughs. With regards to noise, there is a condition in the conditions of approval that states that any aspects that trigger noise for instance must be in compliance with the city's codes. There was some discussion regarding testing of noise and mitigation of noise. All of that and these decisions to do these additional tests are fact based.

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

Planner Tewasart replied that the city has noise regulation standards within chapter 9.53 regarding the limits. All businesses, not just this application are required to comply with the limits. Commissioner Sam inquired about the consequences for a violation. Attorney Karpeles replied that generally speaking it would depend on the severity of the violation of the municipal code and who is responsible, if it is the property owner or a third party and if the violation is a public nuisance. If it does not affect the public generally then it can be dealt with as a private matter, but the timing would all depend on when the city received the violation and the severity of the violation. Commissioner Amador inquired if a condition can be included to quote the code. Attorney Karpeles replied that the noise standards are measured from the median ambient noise level. If the allowable noise levels are less than the ambient noise levels for that area then they do not apply. The greater noise will be considered the ambient noise level for that area.

Commissioner Choi inquired if there are noise insulation standards in place for residential buildings constructed near existing major thoroughfares such as Atlantic Boulevard. Planner Tewasart replied that residential dwelling units are constructed according to building and safety and fire codes. There is not a specific requirement that being adjacent to major arterial requires a building to be constructed a certain way. Commissioner Sam stated that generally if there is a noise concern a row of trees or a wall can be added. Attorney Karpeles stated that if the applicant is amenable, the Commission can add a condition requiring the applicant to submit a noise mitigation plan to the Director that meets the municipal code requirements before the city will issue a building permit. Commissioner Sam stated that that will work with the machinery that are specified for the project and will ultimately be used, including the speaker box and roof mounted equipment.

Commissioner Choi recommended adding a condition that the speaker box will be turned down at 10 p.m. Commissioner Choi stated that in terms of hours of operation, it looks like the other locations in the area, Pico Rivera, Downey, Lakewood, Azusa their hours are to 3:30 a.m. Thursday through Saturday. Commissioner Choi inquired about the existing drive-through establishments in that corridor of South Atlantic, which are also adjacent to residential properties and have been in business for decades and if any noise complaints have been received. Planner Tewasart replied not that staff is aware of.

Chairperson Brossy de Dios stated that his comments were fairly well documented in the minutes for the previous meeting. His primary concern on this project is the fact that the Commission is being asked to approve an application in conflict with the existing setback codes for this kind of project in this particular zone and the amendment are forthcoming but they do not currently exist. Conditioning an approval on something that is speculative is not an appropriate action for this Commission to take. He appreciates the effort to develop a property that has been vacant for a long time, but seems like this particular application is fraught with some difficulties there. The other concern is regarding the drive-through space which terminates within what appears to be a single car length of the exit aisle. Based on what is indicated on the dimensions indicated on the site plan and the reduced setback that is being requested for the parking and drive-through lane, it places the exit of that lane in direct conflict with a car that is waiting to exit the driveway. It appears that it would only take one or two cars in queue to completely block that lane if somebody is waiting to make a

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community

turn. Conditioning that to a right-turn only exit would help, but given the amount of traffic backup that is found at the northbound light at Brightwood it could take a couple of lights.

Action Taken: Motion to adopt **Resolution No. 01-20** approving Conditional Use Permit (CU-19-13) to allow a retail eating establishment with a drive-through in the S-C (Shopping Center) Zone approved, subject to added conditions including 1) requiring right-turn only out of the driveway, 2) speaker box to be turned down at 10 p.m., 3) hours of operation from 9:00 p.m. to 1:00 a.m. seven days a week, and 4) a noise mitigation plan to the Director meeting MPMC requirements before the City will issue a building permit.

Motion: Moved, by Commissioner Choi and seconded by Commissioner Amador, motion failed by the following vote:

Ayes: Commissioners: Choi, Amador, Sam, and Lo
Noes: Commissioners: Brossy de Dios
Absent: Commissioners: None
Abstain: Commissioners: None

[4.] **OLD BUSINESS:** None

[5.] **NEW BUSINESS:** None

[6.] **COMMISSION COMMUNICATIONS AND MATTERS:** None

[7.] **STAFF COMMUNICATIONS AND MATTERS:** None

ADJOURNMENT:

There being no further business for consideration, the Planning Commission meeting was adjourned at 10:08 p.m.

Next regular scheduled meeting on May 26, 2020 at 7:00 p.m. in the Council Chambers.

Mark A. McAvoy
Director of Public Works/City Engineer/City Planner

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community



Planning Commission Staff Report

DATE: November 24, 2020

AGENDA ITEM NO: 3-A

TO: Honorable Chair and Members of the Planning Commission
FROM: Frank Lopez, Interim Director of Public Works/City Engineer/City Planner
SUBJECT: A Public Hearing to Consider Adopting a new Policy Implementing Vehicle Miles Traveled ("VMT") replacing the Level of Service ("LOS") to analyze Transportation Impacts (14 California Code of Regulations § 15064.3).

RECOMMENDATION:

It is recommended that the Planning Commission consider:

- (1) Opening the public hearing;
- (2) Receiving documentary and testimonial evidence;
- (3) Closing the public hearing;
- (4) Adopting the Resolution recommending approval; and
- (5) Taking such additional, related action that may be desirable.

CEQA (California Environmental Quality Act):

The Resolution is exempt from additional environmental review under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") and CEQA Guidelines (14 California Code of Regulations §§ 15000, *et seq.*) because it establishes rules and procedures in compliance with California law; does not involve any commitment to a specific project that would result in a potentially significant physical impact on the environment; and constitutes a organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly the Resolution does not constitute a "project" that requires environmental review (see *specifically*, CEQA Guidelines §§ 15378(b)(2, 5) and 15308).

EXECUTIVE SUMMARY:

Until July 1, 2020, the City analyzed a project's impact upon transportation resources using a calculation identified as "level of service" or LOS. Since July 1st, however, California law requires most projects in Monterey Park to be analyzed using a calculation identified as "Vehicle Miles Traveled" or VMT.¹ Among other things, the City Council is required to adopt a new VMT policy and thresholds of significance² to help the City identify when a project may significantly impact the environment under CEQA.

¹ Public Resources Code § 21099; CEQA Guidelines § 15064.3.

² Per CEQA Guidelines § 15064.7.

BACKGROUND AND ANALYSIS:

Before 2020, LOS was used to evaluate the traffic impacts for all projects within the City. LOS measures peak-hour vehicle delay at an intersection or in a vehicle lane. A traffic analysis results in a letter grade where LOS-A is the best (representing free-flow traffic conditions) and LOS-F is the worst (representing high congestion and traffic).

In 2013, the California Legislature adopted SB 743. Among other things, SB 743 amended the Public Resources Code (“PRC”) to allow different methods of calculating project traffic impacts. This change is intended to fulfill the Legislature’s intent of reducing greenhouse gases, traffic-related air pollution, decreasing the reliance upon personal automobiles, and diversifying land uses (i.e., increasing the density of land use in order to promote alternate means of transportation). To implement these goals, the Legislature authorized the Office of Planning and Research (which administers the CEQA Guidelines) to amend the CEQA Guidelines governing the calculation methods.

Effective July 1, 2020, CEQA Guidelines § 15064.3 requires the City to utilize VMT calculations for evaluating traffic impacts from a proposed project. Relatedly, the City must adopt new thresholds of significance to determine when, based upon the VMT calculations, a project will have a significant effect upon traffic circulation.

To help reduce costs and ensure regional uniformity in VMT methods, the City contracted with the San Gabriel Valley Council of Governments (SGVCOG) to participate in developing a San Gabriel Valley Regional VMT Analysis Model (the “Model”). The thresholds outlined in that Model are consistent with the objectives, principles and standards of the Monterey Park Circulation Element (which is part of the City’s General Plan). The proposed Resolution reflects the completion of the Model and the recommended thresholds of significance.

In sum, the Resolution would implement the following:

➤ **Initial Project Screening (Thresholds):**

The State suggests project screening thresholds based on project size/types, maps, and transit availability to identify projects that are expected to cause a less than significant VMT impact (and, therefore, will not require a detailed study). The following criteria can be used to screen a project for VMT impacts.

- *Local-Serving Projects* – local agencies may filter or “screen out” local-serving projects so that they do not even require a traffic study to look at VMT impacts. The idea is that since they serve the local population, they likely reduce the need for people to drive further away and thus reduce VMT. The City Planner recommends adopting a list of local-service projects that are consistent with the state’s Office of Planning and Research’s (OPR) guidance. While the City can adopt a lower number of daily trips or projects of a small size, higher thresholds are not allowed. A proposed list of local-serving projects is attached as Exhibit A to the Resolution.

- *Low VMT Areas* – the City may also filter out zones that are already considered “low VMT” traffic analysis zones (TAZs) which are compiled and updated through the Southern California Association of Governments or SCAG. TAZ zones are developed utilizing a model with input from local jurisdictions as it pertains to zoning and land thereby resulting in the maximum number of units or square footage and number of residents and potential jobs which would result upon development. Such areas likely already have a good mix of uses. Adding additional uses in this area provides for less trips and bundling of trips. The City Planner recommends that the City screen out residential and office projects located in low VMT areas. Low VMT is defined as 15 percent below the Baseline VMT metrics.
- *Transit Priority Areas (TPA)* - The City Planner recommends screening out projects in TPAs be defined as locations within half-a-mile of a transit stop or station with a minimum of 15-minute headways during peak commute hours. Currently there are no TPAs in Monterey Park. Over time, however, as transit service changes or increases portions of the City may become part of a TPA.
- *Affordable Housing* – The City Planner recommends screening out affordable housing developments or affordable housing units within mixed-use developments as these types of uses result in residents and patrons that work, shop and play locally, thereby reducing the number of miles traveled to obtain similar services.

➤ VMT Methodology

- *Setting a Baseline VMT* - The Baseline VMT is defined as the average VMT for the area represented by the SGVCOG, as measured by VMT per capita, VMT per employee, or VMT per service population. A project’s VMT will be compared to the baseline VMT when determining potential significant impacts. The City can choose different baselines including the City’s existing VMT, a subarea of the SGVCOG, the SGVCOG or the SCAG region. Staff recommends choosing the SGVCOG as the baseline.

➤ Thresholds of Significance

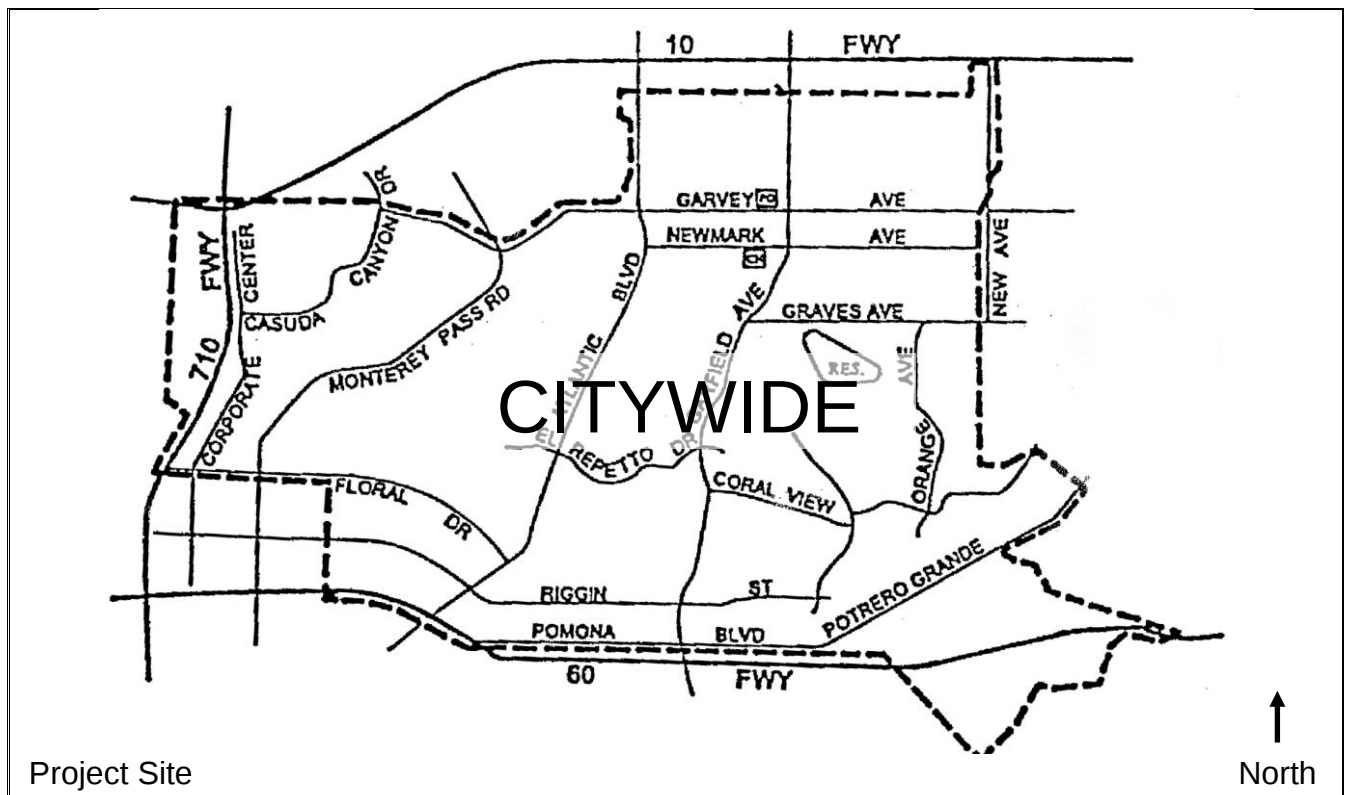
- *Land Use Plans* – The City Planner recommends a significant impact to include those projects where the VMT per service population for the land use plan exceeds 15 percent below the baseline VMT.
- *Projects* – The City Planner recommends consideration of significant impacts to include projects that generate VMT (per capita, per employee, or per service population) higher than 15 percent below the baseline VMT.
- *Transportation Projects* – Significant impacts will occur if the project results in a net increase in VMT.

OTHER ITEMS:

Legal Notification

The legal notice of this hearing was posted at City Hall, Monterey Park Bruggemeyer Library, and Langley Center and published in the Monterey Park Press on **November 12, 2020**, with affidavits of posting and publication on file.

Vicinity Map



ALTERNATIVE COMMISSION CONSIDERATIONS:

None

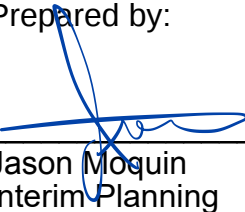
FISCAL IMPACT:

None

Respectfully submitted,

Frank A. Lopez, PE.
Interim Director of Public
Works/City Engineer/City
Planner

Prepared by:



Jason Moquin
Interim Planning
Manager

Reviewed by:



Natalie C. Karpeles
Deputy City Attorney

Attachments:

- Attachment 1: Draft Resolution
- Attachment 2: SB 743

ATTACHMENT 1

Draft Resolution

RESOLUTION NO.

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL ADOPT A POLICY IMPLEMENTING “VEHICLE MILES TRAVELED” FOR THE PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”).

The Planning Commission of the City of Monterey Park does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

- A. The California Legislature amended the California Environmental Quality Act (“CEQA”) in 2013 regarding the analysis of vehicle transportation impacts resulting from proposed projects subject to environmental review. These changes were intended to identify and properly mitigate the impacts of vehicle traffic including, without limitation, noise, air pollution, and safety concerns. This is, in part, to help reduce California’s greenhouse gas emissions. The new requirements are generally defined in CEQA Guidelines (see 14 Cal. Code of Regs. § 15064.3) as “Vehicle Miles Traveled” (or “VMT”);
- B. To comply with these changes, the City cooperated with the San Gabriel Valley Council of Governments (SGVCOG) to create policies implementing VMT for the City;
- C. The result of that cooperation is reflected in the policies and thresholds set forth in attached Exhibit “A”, which is incorporated by reference (the “Monterey Park VMT Policy”);
- D. The City reviewed the Monterey Park VMT Policy’s environmental impacts under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*) and the regulations promulgated thereunder (14 Cal. Code of Regulations §§ 15000, *et seq.*, the “CEQA Guidelines”); and
- E. This Resolution and its findings are made based upon the testimony and evidence presented to the Commission at its November 24, 2020 public hearings including, without limitation, the staff report submitted by the City Planner.

SECTION 2: *Determination.* Based on the findings set forth in Section 1, the Planning Commission recommends that the City Council approve the Monterey Park VMT Policy, more particularly identified in Exhibit “A.”

SECTION 3: *Environmental Assessment.* This Resolution is exempt from additional environmental review under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, “CEQA” and CEQA Guidelines (14 California Code of Regulations §§ 15000, *et seq.*)) because it establishes rules and procedures in compliance with state law; does not involve any commitment to a specific project would could result in a potentially significant physical impact on the environment; and constitutes a organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly the Resolution does not constitute a “project”

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 2 OF 3**

that requires environmental review (see specifically CEQA Guidelines §§ 15378(b)(2, 5) and 15308).

SECTION 4: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 5: *Electronic Signatures.* This Resolution may be executed with electronic signatures in accordance with Government Code §16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 6: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 7: This Resolution will remain effective until superseded by a subsequent resolution.

ADOPTED AND APPROVED this 24th day of November 2020.

Chairperson Eric Brossy de Dios

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the regular meeting held on the 24th day of November 2020, by the following vote of the Planning Commission:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank Lopez, Secretary

**PLANNING COMMISSION
RESOLUTION NO.
PAGE 3 OF 3**

APPROVED AS TO FORM:
Karl H. Berger, City Attorney

By: 

Natalie C. Karpeles,
Deputy City Attorney

RESOLUTION NO.

EXHIBIT A

MONTEREY PARK VEHICLE MILES TRAVELED (VMT) POLICY

I. Policy

California law provides that local-serving project types that may be presumed to have a less than significant impacts absent substantial evidence to the contrary. Local-serving retail projects (less than 50,000 square feet) generally improve the convenience of shopping close to home and have the effect of reducing vehicle travel. The City Planner will screen out the following projects which are presumed to have a less than significant impact (absent substantial evidence to the contrary) as their uses are local serving in nature:

1. Local serving retail (retail establishments less than 50,000 square feet in size)
2. Local-serving K-12 schools
3. Local parks
4. Day care centers
5. Local-serving retail uses less than 50,000 square feet including, without limitation:
 - a. Gas stations
 - b. Banks
 - c. Restaurants
 - d. Shopping Centers
6. Local-serving hotels (e.g., non-destination hotels)
7. Student housing projects on, or adjacent, to a college campus
8. Local-serving assembly uses (places of worship, community organizations)
9. Community institutions (e.g., public libraries, fire stations, local government)
10. Affordable, supportive, or transitional housing
11. Assisted living facilities
12. Senior housing (as defined by the California Department of Housing and Urban Development)

13. Local serving community colleges that are consistent with the assumptions noted in the Regional Transportation Plan adopted and maintained by SCAG (Southern California Association of Governments).

14. Projects generating less than 110 daily vehicle trips. This generally corresponds to the following “typical” development potentials:

- a. 11 single family housing units
- b. 16 multi-family, condominiums, or townhouse housing units
- c. 10,000 sq. ft. of office
- d. 15,000 sq. ft. of light industrial
- e. 63,000 sq. ft. of warehousing

II. VMT Baselines and Thresholds of Significance

Consistent with CEQA Guidelines § 15064.3, the City Council adopted the project baselines and thresholds of significance set forth in Table 1 to guide in determining when a project will have a significant transportation impact.

Table 1

Project Type	Thresholds
Land Use Plan	1) Project Impact: A significant impact would occur if the VMT rate for the plan would exceed 15% below the applicable baseline VMT rate. 2) Cumulative Project Effect: A significant impact would occur if the project increases total regional VMT compared to cumulative no project conditions.
Land Use Project	1) Project Impact: A significant impact would occur if the VMT rate for the project would exceed 15% below the applicable baseline VMT rate. 2) Cumulative Project Effect: A significant impact would occur if the project increases total regional VMT compared to cumulative no project conditions.
Retail Project (over 50,000 square feet)	1) Project Impact: A significant impact would occur if the VMT rate for the project would exceed 15% below the applicable baseline VMT. 2) Cumulative Project Effect: A significant impact would occur if the project increases total VMT in the study area compared to baseline conditions.
Transportation Project	A significant impact would occur if the project causes a net increase in total regional VMT compared to baseline conditions, opening year no project conditions, or cumulative no project

	conditions.
All land use and transportation projects	A significant impact would occur if the project is inconsistent with the RTP/SCS.

Note: Baseline VMT rate is defined as the SGVCOG, Southwest subarea, City of Monterey Park per applicable service population.

Note: The baseline may be changed pending updates to the SCAG RTP model.

ATTACHMENT 2

SB 743

Senate Bill No. 743

CHAPTER 386

An act to amend Sections 65088.1 and 65088.4 of the Government Code, and to amend Sections 21181, 21183, 21186, 21187, 21189.1, and 21189.3 of, to add Section 21155.4 to, to add Chapter 2.7 (commencing with Section 21099) to Division 13 of, to add and repeal Section 21168.6.6 of, and to repeal and add Section 21185 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 27, 2013. Filed with
Secretary of State September 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 743, Steinberg. Environmental quality: transit oriented infill projects, judicial review streamlining for environmental leadership development projects, and entertainment and sports center in the City of Sacramento.

(1) The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 requires a party bringing an action or proceeding alleging that a lead agency's approval of a project certified by the Governor as an environmental leadership development project is in violation of the California Environmental Quality Act to file the action or proceeding with the Court of Appeal with geographic jurisdiction over the project and requires the Court of Appeal to issue its decision within 175 days of the filing of the petition. The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 requires the lead agency to concurrently prepare the record of proceeding for the leadership project with the review and consideration of the project. The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 provides that the above provision does not apply to a project for which a lead agency fails to certify an environmental impact report on or before June 1, 2014. The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 is repealed by its own terms on January 1, 2015.

This bill would instead require the Judicial Council, on or before July 1, 2014, to adopt a rule of court to establish procedures applicable to actions or proceedings seeking judicial review of a public agency's action in certifying the environmental impact report and in granting project approval that requires the actions or proceedings, including any appeals therefrom, be resolved, within 270 days of the certification of the record of proceedings. The bill would extend the operation of the judicial review procedures unless the lead agency fails to certify an environmental impact report for an environmental leadership project on or before January 1, 2016. The bill would provide that the above provisions do not apply to a project if the Governor does not certify the project as an environmental leadership

development project prior to January 1, 2016. Because this bill would extend the time period for which a lead agency would be required to concurrently prepare the record of proceeding with the review and consideration of the environmental leadership development projects, this bill would impose a state-mandated local program. The bill would require the lead agency, within 10 days of the Governor's certification, to issue, at the applicant's expense, a specified public notice, thereby imposing a state-mandated local program. The bill would repeal the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 on January 1, 2017.

(2) The California Environmental Quality Act, commonly known as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure by which a person may seek judicial review of the decision of the lead agency made pursuant to CEQA.

This bill would provide that aesthetic and parking impacts of a residential, mixed-use residential, or employment center project, as defined, on an infill site, as defined, within a transit priority area, as defined, shall not be considered significant impacts on the environment. The bill would require the Office of Planning and Research to prepare and submit to the Secretary of the Natural Resources Agency, and the secretary to certify and adopt, revisions to the guidelines for the implementation of CEQA establishing criteria for determining the significance of transportation impacts of projects within transit priority areas.

This bill would, except for specified circumstances, exempt from CEQA residential, employment center, and mixed-use development projects meeting specified criteria. Because a lead agency would be required to determine the applicability of this exemption, this bill would impose a state-mandated local program.

This bill would require the public agency, in certifying the environmental impact report and in granting approvals for a specified entertainment and sports center project located in the City of Sacramento, including the concurrent preparation of the record of proceedings and the certification of the record of proceeding within 5 days of the filing of a specified notice, to comply with specified procedures. Because a public agency would be required to comply with those new procedures, this bill would impose a state-mandated local program. The bill would require the Judicial Council, on or before July 1, 2014, to adopt a rule of court to establish procedures applicable to actions or proceedings seeking judicial review of a public agency's action in certifying the environmental impact report and in granting project approval that requires the actions or proceedings, including any

appeals therefrom, be resolved, to the extent feasible, within 270 days of the certification of the record of proceedings. The bill would provide that the above provisions are inoperative and repealed on January 1 of the following year if the applicant fails to notify the lead agency before the release of the draft environmental impact report for public comment that the applicant is electing to proceed pursuant to the above provisions.

(3) Existing law requires the development, adoption, and updating of a congestion management program for each county that includes an urbanized area, as defined. The plan is required to contain specified elements and to be submitted to regional agencies, as defined, for determination of whether the program is consistent with regional transportation plans. The regional agency is then directed to monitor the implementation of all elements of each congestion management program. The required elements include traffic level of service standards for a system of designated highways and roadways. Existing law defines “infill opportunity zone” for purposes of the above-described provisions and exempts streets and highways in an infill opportunity zone from the level of service standards specified in the above-described provisions and instead requires alternate level of service standards to be applied. Existing law prohibits a city or county from designating an infill opportunity zone after December 31, 2009.

This bill would revise the definition of “infill opportunity zone,” as specified. The bill would authorize the designation of an infill opportunity zone that is a transit priority area within a sustainable communities strategy or alternative planning strategy adopted by an applicable metropolitan planning organization.

(4) Existing law terminates the designation of an infill opportunity zone if no development project is completed within that zone within 4 years from the date of the designation.

This bill would repeal this provision.

This bill would make findings and declarations as to the necessity of a special statute for the City of Sacramento.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares the following:

(1) With the adoption of Chapter 728 of the Statutes of 2008, popularly known as the Sustainable Communities and Climate Protection Act of 2008, the Legislature signaled its commitment to encouraging land use and transportation planning decisions and investments that reduce vehicle miles traveled and contribute to the reductions in greenhouse gas emissions required in the California Global Warming Solutions Act of 2006 (Division

25.5 (commencing with Section 38500) of the Health and Safety Code). Similarly, the California Complete Streets Act of 2008 (Chapter 657 of the Statutes of 2008) requires local governments to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel.

(2) Transportation analyses under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) typically study changes in automobile delay. New methodologies under the California Environmental Quality Act are needed for evaluating transportation impacts that are better able to promote the state's goals of reducing greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal transportation system, and providing clean, efficient access to destinations.

(b) It is the intent of the Legislature to do both of the following:

(1) Ensure that the environmental impacts of traffic, such as noise, air pollution, and safety concerns, continue to be properly addressed and mitigated through the California Environmental Quality Act.

(2) More appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions.

SEC. 2. The Legislature further finds and declares all of the following:

(a) The Federal Reserve has stated that “[m]ost policymakers estimate the longer-run normal rate of unemployment is between 5.2 and 6 percent.” At 7.6 percent, the current United States unemployment rate remains markedly higher than the normal rate and both the unemployment rates in Sacramento County and California are higher than the current national unemployment rate.

(b) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) requires that the environmental impacts of development projects be identified and mitigated. The act also guarantees the public an opportunity to review and comment on the environmental impacts of a project and to participate meaningfully in the development of mitigation measures for potentially significant environmental impacts.

(c) The existing home of the City of Sacramento's National Basketball Association (NBA) team, the Sleep Train Arena, is an old and outmoded facility located outside of the City of Sacramento's downtown area and is not serviced by the region's existing heavy and light rail transportation networks. It was constructed 25 years ago and a new, more efficient entertainment and sports center located in downtown Sacramento is needed to meet the city's and region's needs.

(d) The City of Sacramento and the region would greatly benefit from the addition of a multipurpose event center capable of hosting a wide range of events including exhibitions, conventions, sporting events, as well as musical, artistic, and cultural events in downtown Sacramento.

(e) The proposed entertainment and sports center project is a public-private partnership between the City of Sacramento and the applicant that will result in the construction of a new state-of-the-art multipurpose event center, and surrounding infill development in downtown Sacramento as described in the notice of preparation released by the City of Sacramento on April 12, 2013.

(f) The project will generate over 4,000 full-time jobs including employees hired both during construction and operation of the entertainment and sports center project. This employment estimate does not include the substantial job generation that will occur with the surrounding development uses, which will generate additional hospitality, office, restaurant, and retail jobs in Sacramento's downtown area.

(g) The project also presents an unprecedented opportunity to implement innovative measures that will significantly reduce traffic and air quality impacts and mitigate the greenhouse gas emissions resulting from the project. The project site is located in downtown Sacramento near heavy and light rail transit facilities, situated to maximize opportunities to encourage nonautomobile modes of travel to the entertainment and sports center project, and is consistent with the policies and regional vision included in the Sustainable Communities Strategy adopted pursuant to Chapter 728 of the Statutes of 2008 by the Sacramento Area Council of Governments in April of 2012. The project is also located within close proximity to three major infill development areas including projects (The Bridge District, Railyards, and Township Nine) that received infill infrastructure grants from the state pursuant to Proposition 1C.

(h) It is in the interest of the state to expedite judicial review of the entertainment and sports center project, as appropriate, while protecting the environment and the right of the public to review, comment on, and, if necessary, seek judicial review of, the adequacy of the environmental impact report for the project.

SEC. 3. Section 65088.1 of the Government Code is amended to read:

65088.1. As used in this chapter the following terms have the following meanings:

(a) Unless the context requires otherwise, "agency" means the agency responsible for the preparation and adoption of the congestion management program.

(b) "Bus rapid transit corridor" means a bus service that includes at least four of the following attributes:

- (1) Coordination with land use planning.
- (2) Exclusive right-of-way.
- (3) Improved passenger boarding facilities.
- (4) Limited stops.
- (5) Passenger boarding at the same height as the bus.
- (6) Prepaid fares.
- (7) Real-time passenger information.
- (8) Traffic priority at intersections.
- (9) Signal priority.

(10) Unique vehicles.

(c) “Commission” means the California Transportation Commission.

(d) “Department” means the Department of Transportation.

(e) “Infill opportunity zone” means a specific area designated by a city or county, pursuant to subdivision (c) of Section 65088.4, that is within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan. A major transit stop is as defined in Section 21064.3 of the Public Resources Code, except that, for purposes of this section, it also includes major transit stops that are included in the applicable regional transportation plan. For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

(f) “Interregional travel” means any trips that originate outside the boundary of the agency. A “trip” means a one-direction vehicle movement. The origin of any trip is the starting point of that trip. A roundtrip consists of two individual trips.

(g) “Level of service standard” is a threshold that defines a deficiency on the congestion management program highway and roadway system which requires the preparation of a deficiency plan. It is the intent of the Legislature that the agency shall use all elements of the program to implement strategies and actions that avoid the creation of deficiencies and to improve multimodal mobility.

(h) “Local jurisdiction” means a city, a county, or a city and county.

(i) “Multimodal” means the utilization of all available modes of travel that enhance the movement of people and goods, including, but not limited to, highway, transit, nonmotorized, and demand management strategies including, but not limited to, telecommuting. The availability and practicality of specific multimodal systems, projects, and strategies may vary by county and region in accordance with the size and complexity of different urbanized areas.

(j) (1) “Parking cash-out program” means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space. “Parking subsidy” means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

(2) A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(k) “Performance measure” is an analytical planning tool that is used to quantitatively evaluate transportation improvements and to assist in determining effective implementation actions, considering all modes and

strategies. Use of a performance measure as part of the program does not trigger the requirement for the preparation of deficiency plans.

(l) “Urbanized area” has the same meaning as is defined in the 1990 federal census for urbanized areas of more than 50,000 population.

(m) Unless the context requires otherwise, “regional agency” means the agency responsible for preparation of the regional transportation improvement program.

SEC. 4. Section 65088.4 of the Government Code is amended to read:

65088.4. (a) It is the intent of the Legislature to balance the need for level of service standards for traffic with the need to build infill housing and mixed use commercial developments within walking distance of mass transit facilities, downtowns, and town centers and to provide greater flexibility to local governments to balance these sometimes competing needs.

(b) Notwithstanding any other provision of law, level of service standards described in Section 65089 shall not apply to the streets and highways within an infill opportunity zone.

(c) The city or county may designate an infill opportunity zone by adopting a resolution after determining that the infill opportunity zone is consistent with the general plan and any applicable specific plan, and is a transit priority area within a sustainable communities strategy or alternative planning strategy adopted by the applicable metropolitan planning organization.

SEC. 5. Chapter 2.7 (commencing with Section 21099) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 2.7. MODERNIZATION OF TRANSPORTATION ANALYSIS FOR TRANSIT-ORIENTED INFILL PROJECTS

21099. (a) For purposes of this section, the following terms mean the following:

(1) “Employment center project” means a project located on property zoned for commercial uses with a floor area ratio of no less than 0.75 and that is located within a transit priority area.

(2) “Floor area ratio” means the ratio of gross building area of the development, excluding structured parking areas, proposed for the project divided by the net lot area.

(3) “Gross building area” means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

(4) “Infill site” means a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

(5) “Lot” means all parcels utilized by the project.

(6) “Net lot area” means the area of a lot, excluding publicly dedicated land and private streets that meet local standards, and other public use areas as determined by the local land use authority.

(7) “Transit priority area” means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

(b) (1) The Office of Planning and Research shall prepare, develop, and transmit to the Secretary of the Natural Resources Agency for certification and adoption proposed revisions to the guidelines adopted pursuant to Section 21083 establishing criteria for determining the significance of transportation impacts of projects within transit priority areas. Those criteria shall promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. In developing the criteria, the office shall recommend potential metrics to measure transportation impacts that may include, but are not limited to, vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated. The office may also establish criteria for models used to analyze transportation impacts to ensure the models are accurate, reliable, and consistent with the intent of this section.

(2) Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any.

(3) This subdivision does not relieve a public agency of the requirement to analyze a project’s potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation. The methodology established by these guidelines shall not create a presumption that a project will not result in significant impacts related to air quality, noise, safety, or any other impact associated with transportation. Notwithstanding the foregoing, the adequacy of parking for a project shall not support a finding of significance pursuant to this section.

(4) This subdivision does not preclude the application of local general plan policies, zoning codes, conditions of approval, thresholds, or any other planning requirements pursuant to the police power or any other authority.

(5) On or before July 1, 2014, the Office of Planning and Research shall circulate a draft revision prepared pursuant to paragraph (1).

(c) (1) The Office of Planning and Research may adopt guidelines pursuant to Section 21083 establishing alternative metrics to the metrics used for traffic levels of service for transportation impacts outside transit priority areas. The alternative metrics may include the retention of traffic levels of service, where appropriate and as determined by the office.

(2) This subdivision shall not affect the standard of review that would apply to the new guidelines adopted pursuant to this section.

(d) (1) Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment.

(2) (A) This subdivision does not affect, change, or modify the authority of a lead agency to consider aesthetic impacts pursuant to local design review ordinances or other discretionary powers provided by other laws or policies.

(B) For the purposes of this subdivision, aesthetic impacts do not include impacts on historical or cultural resources.

(e) This section does not affect the authority of a public agency to establish or adopt thresholds of significance that are more protective of the environment.

SEC. 6. Section 21155.4 is added to the Public Resources Code, to read:

21155.4. (a) Except as provided in subdivision (b), a residential, employment center, as defined in paragraph (1) of subdivision (a) of Section 21099, or mixed-use development project, including any subdivision, or any zoning, change that meets all of the following criteria is exempt from the requirements of this division:

(1) The project is proposed within a transit priority area, as defined in subdivision (a) of Section 21099.

(2) The project is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified.

(3) The project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions reduction targets.

(b) Further environmental review shall be conducted only if any of the events specified in Section 21166 have occurred.

SEC. 7. Section 21168.6.6 is added to the Public Resources Code, to read:

21168.6.6. (a) For the purposes of this section, the following definitions shall have the following meanings:

(1) "Applicant" means a private entity or its affiliates that proposes the project and its successors, heirs, and assignees.

(2) "City" means the City of Sacramento.

(3) "Downtown arena" means the following components of the entertainment and sports center project from demolition and site preparation through operation:

(A) An arena facility that will become the new home to the City of Sacramento's National Basketball Association (NBA) team that does both of the following:

(i) Receives Leadership in Energy and Environmental Design (LEED) gold certification for new construction within one year of completion of the first NBA season.

(ii) Minimizes operational traffic congestion and air quality impacts through either or both project design and the implementation of feasible mitigation measures that will do all of the following:

(I) Achieve and maintain carbon neutrality or better by reducing to at least zero the net emissions of greenhouse gases, as defined in subdivision (g) of Section 38505 of the Health and Safety Code, from private automobile trips to the downtown arena as compared to the baseline as verified by the Sacramento Metropolitan Air Quality Management District.

(II) Achieve a per attendee reduction in greenhouse gas emissions from automobiles and light trucks compared to per attendee greenhouse gas emissions associated with the existing arena during the 2012–13 NBA season that will exceed the carbon reduction targets for 2020 and 2035 achieved in the sustainable communities strategy prepared by the Sacramento Area Council of Governments for the Sacramento region pursuant to Chapter 728 of the Statutes of 2008.

(III) Achieve and maintain vehicle-miles-traveled per attendee for NBA events at the downtown arena that is no more than 85 percent of the baseline.

(B) Associated public spaces.

(C) Facilities and infrastructure for ingress, egress, and use of the arena facility.

(4) “Entertainment and sports center project” or “project” means a project that substantially conforms to the project description for the entertainment and sports center project set forth in the notice of preparation released by the City of Sacramento on April 12, 2013.

(b) (1) The city may prosecute an eminent domain action for 545 and 600 K Street, Sacramento, California, and surrounding publicly accessible areas and rights-of-way within 200 feet of 600 K Street, Sacramento, California, through order of possession pursuant to the Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure) prior to completing the environmental review under this division.

(2) Paragraph (1) shall not apply to any other eminent domain actions prosecuted by the City of Sacramento or to eminent domain actions based on a finding of blight.

(c) Notwithstanding any other law, the procedures established pursuant to subdivision (d) shall apply to an action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report for the project or the granting of any project approvals.

(d) On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for the project or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings pursuant to subdivision (f).

(e) (1) The draft and final environmental impact report shall include a notice in not less than 12-point type stating the following:

THIS EIR IS SUBJECT TO SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE. A COPY OF SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.

(2) The draft environmental impact report and final environmental impact report shall contain, as an appendix, the full text of this section.

(3) Within 10 days after the release of the draft environmental impact report, the lead agency shall conduct an informational workshop to inform the public of the key analyses and conclusions of that report.

(4) Within 10 days before the close of the public comment period, the lead agency shall hold a public hearing to receive testimony on the draft environmental impact report. A transcript of the hearing shall be included as an appendix to the final environmental impact report.

(5) (A) Within five days following the close of the public comment period, a commenter on the draft environmental impact report may submit to the lead agency a written request for nonbinding mediation. The lead agency and applicant shall participate in nonbinding mediation with all commenters who submitted timely comments on the draft environmental impact report and who requested the mediation. Mediation conducted pursuant to this paragraph shall end no later than 35 days after the close of the public comment period.

(B) A request for mediation shall identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated.

(C) The lead agency shall select one or more mediators who shall be retired judges or recognized experts with at least five years experience in land use and environmental law or science, or mediation. The applicant shall bear the costs of mediation.

(D) A mediation session shall be conducted on each area of dispute with the parties requesting mediation on that area of dispute.

(E) The lead agency shall adopt, as a condition of approval, any measures agreed upon by the lead agency, the applicant, and any commenter who requested mediation. A commenter who agrees to a measure pursuant to this subparagraph shall not raise the issue addressed by that measure as a basis for an action or proceeding challenging the lead agency's decision to certify the environmental impact report or to grant one or more initial project approvals.

(6) The lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:

(A) New issues raised in the response to comments by the lead agency.

(B) New information released by the public agency subsequent to the release of the draft environmental impact report, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents.

(C) Changes made to the project after the close of the public comment period.

(D) Proposed conditions for approval, mitigation measures, or proposed findings required by Section 21081 or a proposed reporting and monitoring program required by paragraph (1) of subdivision (a) of Section 21081.6, where the lead agency releases those documents subsequent to the release of the draft environmental impact report.

(E) New information that was not reasonably known and could not have been reasonably known during the public comment period.

(7) The lead agency shall file the notice required by subdivision (a) of Section 21152 within five days after the last initial project approval.

(f) (1) The lead agency shall prepare and certify the record of the proceedings in accordance with this subdivision and in accordance with Rule 3.1365 of the California Rules of Court. The applicant shall pay the lead agency for all costs of preparing and certifying the record of proceedings.

(2) No later than three business days following the date of the release of the draft environmental impact report, the lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to or relied on by the lead agency in the preparation of the draft environmental impact report. A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is prepared or received by the lead agency.

(3) Notwithstanding paragraph (2), documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(4) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any

such comment available to the public in a readily accessible electronic format within five days of its receipt.

(5) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(6) The lead agency shall indicate in the record of the proceedings comments received that were not considered by the lead agency pursuant to paragraph (6) of subdivision (e) and need not include the content of the comments as a part of the record.

(7) Within five days after the filing of the notice required by subdivision (a) of Section 21152, the lead agency shall certify the record of the proceedings for the approval or determination and shall provide an electronic copy of the record to a party that has submitted a written request for a copy. The lead agency may charge and collect a reasonable fee from a party requesting a copy of the record for the electronic copy, which shall not exceed the reasonable cost of reproducing that copy.

(8) Within 10 days after being served with a complaint or a petition for a writ of mandate, the lead agency shall lodge a copy of the certified record of proceedings with the superior court.

(9) Any dispute over the content of the record of the proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

(10) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

(g) (1) As a condition of approval of the project subject to this section, the lead agency shall require the applicant, with respect to any measures specific to the operation of the downtown arena, to implement those measures that will meet the requirements of this division by the end of the first NBA regular season or June of the first NBA regular season, whichever is later, during which an NBA team has played at the downtown arena.

(2) To maximize public health, environmental, and employment benefits, the lead agency shall place the highest priority on feasible measures that will reduce greenhouse gas emissions on the downtown arena site and in the neighboring communities of the downtown arena. Mitigation measures that shall be considered and implemented, if feasible and necessary, to achieve the standards set forth in subclauses (I) to (III), inclusive, of clause (ii) of subparagraph (A) of paragraph (3) of subdivision (a), including, but not limited to:

(A) Temporarily expanding the capacity of a public transit line, as needed, to serve downtown arena events.

(B) Providing private charter buses or other similar services, as needed, to serve downtown arena events.

(C) Paying its fair share of the cost of measures that expand the capacity of a public fixed or light rail station that is used by spectators attending downtown arena events.

(3) Offset credits shall be employed by the applicant only after feasible local emission reduction measures have been implemented. The applicant shall, to the extent feasible, place the highest priority on the purchase of offset credits that produce emission reductions within the city or the boundaries of the Sacramento Metropolitan Air Quality Management District.

(h) (1) (A) In granting relief in an action or proceeding brought pursuant to this section, the court shall not stay or enjoin the construction or operation of the downtown arena unless the court finds either of the following:

(i) The continued construction or operation of the downtown arena presents an imminent threat to the public health and safety.

(ii) The downtown arena site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the downtown arena unless the court stays or enjoins the construction or operation of the downtown arena.

(B) If the court finds that clause (i) or (ii) is satisfied, the court shall only enjoin those specific activities associated with the downtown arena that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

(2) An action or proceeding to attack, set aside, void, or annul a determination, finding, or decision of the lead agency granting a subsequent project approval shall be subject to the requirements of Chapter 6 (commencing with Section 21165).

(3) Where an action or proceeding brought pursuant to this section challenges aspects of the project other than the downtown arena and those portions or specific project activities are severable from the downtown arena, the court may enter an order as to aspects of the project other than the downtown arena that includes one or more of the remedies set forth in Section 21168.9.

(i) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(j) (1) This section does not apply to the project and shall become inoperative on the date of the release of the draft environmental impact report and is repealed on January 1 of the following year, if the applicant fails to notify the lead agency prior to the release of the draft environmental impact report for public comment that the applicant is electing to proceed pursuant to this section.

(2) The lead agency shall notify the Secretary of State if the applicant fails to notify the lead agency of its election to proceed pursuant to this section.

SEC. 8. Section 21181 of the Public Resources Code is amended to read:

21181. This chapter does not apply to a project if the Governor does not certify a project as an environmental leadership development project eligible for streamlining provided pursuant to this chapter prior to January 1, 2016.

SEC. 9. Section 21183 of the Public Resources Code is amended to read:

21183. The Governor may certify a leadership project for streamlining pursuant to this chapter if all the following conditions are met:

(a) The project will result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction.

(b) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment. For purposes of this subdivision, “jobs that pay prevailing wages” means that all construction workers employed in the execution of the project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. If the project is certified for streamlining, the project applicant shall include this requirement in all contracts for the performance of the work.

(c) The project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation, as determined by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(d) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required pursuant to this division to certify the project under this chapter shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. In the case of environmental mitigation measures, the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.

(e) The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to subdivision (f) of Section 21185.

(f) The project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to this division, in a form and manner specified by the lead agency for the project.

SEC. 10. Section 21185 of the Public Resources Code is repealed.

SEC. 11. Section 21185 is added to the Public Resources Code, to read:

21185. On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for an environmental leadership development

project certified by the Governor pursuant to this chapter or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, within 270 days of certification of the record of proceedings pursuant to Section 21186.

SEC. 12. Section 21186 of the Public Resources Code is amended to read:

21186. Notwithstanding any other law, the preparation and certification of the administrative record for a leadership project certified by the Governor shall be performed in the following manner:

(a) The lead agency for the project shall prepare the administrative record pursuant to this division concurrently with the administrative process.

(b) All documents and other materials placed in the administrative record shall be posted on, and be downloadable from, an Internet Web site maintained by the lead agency commencing with the date of the release of the draft environmental impact report.

(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft environmental impact report.

(d) A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.

(e) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.

(f) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(g) Notwithstanding paragraphs (b) to (f), inclusive, documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(h) The lead agency shall certify the final administrative record within five days of its approval of the project.

(i) Any dispute arising from the administrative record shall be resolved by the superior court. Unless the superior court directs otherwise, a party

disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

(j) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

SEC. 13. Section 21187 of the Public Resources Code is amended to read:

21187. Within 10 days of the Governor certifying an environmental leadership development project pursuant to this section, the lead agency shall, at the applicant's expense, issue a public notice in no less than 12-point type stating the following:

“THE APPLICANT HAS ELECTED TO PROCEED UNDER CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS 21185 TO 21186, INCLUSIVE, OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE IS INCLUDED BELOW.”

The public notice shall be distributed by the lead agency as required for public notices issued pursuant to paragraph (3) of subdivision (b) of Section 21092.

SEC. 14. Section 21189.1 of the Public Resources Code is amended to read:

21189.1. If, prior to January 1, 2016, a lead agency fails to approve a project certified by the Governor pursuant to this chapter, then the certification expires and is no longer valid.

SEC. 15. Section 21189.3 of the Public Resources Code is amended to read:

21189.3. This chapter shall remain in effect until January 1, 2017, and as of that date is repealed unless a later enacted statute extends or repeals that date.

SEC. 16. With respect to certain provisions of this measure, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need for the development of an entertainment and sports center project in the City of Sacramento in an expeditious manner.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments

sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

O