

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA ADDING CHAPTER 28.85 TO THE SANTA BARBARA MUNICIPAL CODE, DELETING SECTIONS 28.87.300 AND 28.87.350, AND AMENDING SECTIONS 28.95.010 THROUGH 28.95.070 TO IMPLEMENT THE CITY'S 2011 GENERAL PLAN NONRESIDENTIAL GROWTH MANAGEMENT PROGRAM.

THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 28 of the Santa Barbara Municipal Code is hereby amended by adding Chapter 28.85 to read as follows:

**Chapter 28.85
Nonresidential Growth Management Program.**

Section 28.85.010 Nonresidential Development Limitation.

No application for a land use permit for a nonresidential construction project, as defined in Section 28.85.020 of this Chapter, will be accepted or approved on or after December 6, 1989 unless all of the new nonresidential floor area within the project is allocated from one or more of the categories specified in this Section and the project is consistent with the City's Traffic Management Strategy (as approved by City Resolution No. ___ dated as of March 12, 2013 and as filed with the City Clerk) as implemented in Section 28.85.050.

A. DEVELOPMENT LIMIT. From the effective date of this ordinance until December 31, 2033, the amount of new nonresidential floor area available for nonresidential construction projects shall be restricted to no more than one million three hundred fifty thousand (1,350,000) square feet. This allowable floor area shall be allocated from the following categories, as defined in Section 28.85.020 of this Chapter:

<u>Category</u>	<u>Square Footage</u>
Community Benefit	
Small Addition Floor Area	600,000 s.f.
Vacant Property	400,000 s.f.

350,000 s.f.

Except as otherwise provided in this Section and as allocated on an annual basis by a resolution of the Planning Commission, Small Additions shall be limited to no more than twenty thousand (20,000) square feet of nonresidential floor area during each calendar year from the effective date of this ordinance through December 31, 2033. Any unused, expired, or withdrawn development square footage remaining from each annual allotment from the Small Additions category may be rolled over to the following year's Small Additions allotment or allocated to another category by a resolution of the Planning Commission. Procedures for allocating square footage under these categories shall be established by resolution of City Council.

B. NONRESIDENTIAL FLOOR AREA EXCLUDED FROM THE DEVELOPMENT LIMIT. Nonresidential floor area may be constructed or converted from residential floor area without requiring an allocation from the allowable square footage specified in Subsection A of this Section so long as the nonresidential floor area falls within the following categories, as defined in Section 28.85.020 of this Chapter:

1. City Government Buildings.
2. Government Displacement Floor Area.
3. Hotel Room for Room Replacement.
4. Minor Addition Floor Area.
5. Prior-Pending Projects.
6. Prior-Approved Projects.
7. Prior-Approved Specific Plan Project.
8. Transfers of Existing Development Rights, as defined in Section 28.95.020 of this Code.

Section 28.85.020 Definitions.

The following words and phrases shall have the meaning indicated, unless the context or usage clearly requires a different meaning:

A. COMMUNITY BENEFIT PROJECT. A project which has been designated by the City Council as satisfying one or more of the following categories is a Community Benefit Project:

1. Community Priority Project. A Community Priority Project is a project that has a broad public benefit, is not principally operated for private profit, and is necessary to meet a present or projected need directly related to public health, safety or general welfare (e.g., museums, childcare facilities, health clinics).

2. Economic Development Project. An Economic Development Project is a project that is consistent with the City Charter, General Plan and this Title, will enhance the standard of living for City and South Coast residents and will strengthen the local or regional economy by either creating new permanent employment opportunities or enhancing the City's revenue base. An Economic Development Project should also accomplish one or more of the following:

a. Support diversity and balance in the local or regional economy by establishing or expanding businesses or industries in sectors which currently do not exist on the South Coast or are present only in a limited manner; or

b. Provide new recreational, educational, or cultural opportunities for City residents and visitors; or

c. Provide products or services which are currently not available or are in limited supply either locally or regionally; or

d. Support a small and local business in the Santa Barbara community which is being started, maintained, relocated, redeveloped or expanded.

For purposes of this Section, "standard of living" is defined as wages, employment, environment, resources, public safety, housing, schools, parks and recreation, social and human services, and cultural arts.

3. Planned Development - New Automobile Sales Project. A Planned Development - New Automobile Sales Project is a project within a Planned Development zone that proposes a project involving new automobile sales, rental and leasing as allowed in Chapter 28.39 of this Code.

B. DEVELOPMENT AREA. A Development Area is a portion of the City that the City of Santa Barbara Traffic Model (as approved by the City Council by Resolution No. ___ dated as of March 12, 2013 and as filed with the City Clerk) has shown to have distinct traffic generation patterns, as identified on the Development Area Map. The City of Santa Barbara Development Areas are shown on the map labeled "Growth Management Program Development Areas" (dated as of March 12, 2013 which map is attached hereto as Exhibit ___ and as filed with the City Clerk). All notations, references and other information shown on said map are incorporated by reference herein and made a part hereof.

C. EXISTING NONRESIDENTIAL FLOOR AREA. Existing Nonresidential Floor Area is nonresidential floor area that existed on a lot as of October 1, 1988 or nonresidential floor

area that was approved and constructed or converted from residential floor area after October 1, 1988 in compliance with, or exempt from, a City development plan or nonresidential growth management program ordinance.

D. FLOOR AREA. Floor Area is the area included within the surrounding exterior walls of a building, or a portion thereof, excluding the area occupied by the exterior walls, vent shafts and courts, stairway landings, or areas or structures used exclusively for parking. Enclosed spaces that contain building "infrastructure" (e.g., mechanical equipment enclosures, trash and recycling enclosures, air conditioners, forced air units, electric vaults, water heaters and softeners, cellular telephone equipment, and other similar uses) shall not count toward the calculation of floor area if such areas are designed in the minimum size necessary to screen or enclose such equipment and the space cannot be converted to storage or another non-infrastructure use. The area occupied by an elevator shaft or stairs shall only be counted in the calculation of floor area on one floor. A building, or a portion thereof, occupied exclusively by public utility equipment constitutes floor area for purposes of development plan review, but shall not count toward the calculation of floor area for purposes of the development limit specified in Subsection 28.85.010.A. Any floor area which was constructed, approved, demolished or converted in violation of any provision of this Municipal Code, shall not give rise to any right to rebuild or transfer floor area.

E. GOVERNMENT BUILDING. A government building is a building owned or leased by the city of Santa Barbara, excluding buildings or portions of buildings that are leased to private entities conducting non-governmental activities (e.g., the private leaseholds at the Harbor or Airport.)~~;~~

F. GOVERNMENT DISPLACEMENT FLOOR AREA. Government Displacement Floor Area is nonresidential floor area that is constructed or converted from residential floor area to replace nonresidential floor area that was acquired, removed or damaged by direct condemnation or negotiated acquisition by a governmental entity (federal, state or local), provided the nonresidential floor area of the project constructed to replace a building acquired or removed by the government does not exceed the nonresidential floor area of the building so acquired or removed, unless the additional nonresidential floor area is allocated from another available category.

G. HOTEL ROOM FOR ROOM REPLACEMENT. A hotel room for room

replacement is a project which consists of the replacement of existing hotel rooms at the same location, or transferred from another location as part of an approved Transfer of Existing Development Rights pursuant to Chapter 28.95 of this Code, on a room for room basis. A hotel room for room replacement does not include nonresidential floor area outside the hotel rooms.

H. LAND USE PERMIT. A land use permit is a governmental decision concerning a permit, license, certificate, or other entitlement for use of land, including a conditional use permit, variance, modification, development plan, specific plan, general plan amendment, coastal development permit, conversion permit, subdivision map (except those creating new single family lots), building permit, grading permit, demolition permit, water service connection or any similar approval or use.

I. MINOR ADDITION FLOOR AREA. Minor Addition Floor Area is the first 1,000 square feet of new nonresidential floor area, over the amount of nonresidential floor area that existed on the lot as of December 6, 1989. Procedures for allocating and accounting for Minor Addition Floor Area shall be established by resolution of the City Council.

J. NONRESIDENTIAL CONSTRUCTION PROJECT. A nonresidential construction project is a project, or portion thereof, which consists of the construction of new nonresidential floor area or the conversion of existing residential floor area to nonresidential use. The repair, replacement, or reconstruction of Existing Nonresidential Floor Area (including existing development rights that are transferred from another site) is not considered new nonresidential floor area for the purpose of the nonresidential development limitation specified in Subsection 28.85.010.A. A nonresidential construction project may occur in the following forms:

1. The addition of new nonresidential floor area to an existing structure; or
2. The construction of new nonresidential floor area in a free standing structure on real property containing another structure; or
3. The construction of new nonresidential floor area as a portion of a mixed use building; or
4. The conversion of residential floor area to nonresidential floor area.
5. A new building on vacant real property that contains nonresidential floor area.

K. NONRESIDENTIAL FLOOR AREA RATIO. The Nonresidential Floor Area Ratio of a lot is a ratio of the nonresidential floor area on the lot to the net lot area of the lot.

L. PRIOR-APPROVED PROJECTS. A Prior-Approved Project is a project for which a land use permit (other than an application for Specific Plan approval) was approved on or before April 11, 2013 and where the approval remains valid.

M. PRIOR-APPROVED SPECIFIC PLAN PROJECT. A Prior-Approved Specific Plan Project is a project that implements a specific plan that was approved prior to April 16, 1986, the specific plan required the construction of substantial circulation system improvements, and the required circulation system improvements were either:

1. Installed prior to April 11, 2013; or
2. Constructed after April 11, 2013 pursuant to an Owner Participation Agreement and installed prior to the approval of any development plan(s) related to the approved specific plan.

N. PRIOR-PENDING PROJECT. A Prior-Pending Project is a nonresidential construction project for which an application for a land use permit was deemed complete by the City before April 11, 2013 and the application: i. has not been denied by the City; ii. has not been withdrawn by the applicant; and iii. has not yet received City approval.

O. SMALL ADDITION FLOOR AREA. Small Addition Floor Area is the 2,000 square feet of new nonresidential floor area over the amount of nonresidential floor area that existed on the lot on December 6, 1989 and any floor area that has been constructed or approved as Minor Addition Floor Area pursuant to this Chapter or any preceding development plan ordinance since December 6, 1989. Procedures for allocating Small Addition Floor Area shall be established by resolution of the City Council.

P. VACANT PROPERTY. A Vacant Property is a lot of land that was not developed with a permanent building containing floor area as of October 1, 1988 and has not since been developed with any permanent building containing floor area. A vacant property may be allocated new nonresidential floor area from the Vacant Property category up to a maximum nonresidential floor area ratio of .25. Any nonresidential development proposed for the lot over the .25 floor area ratio must be allocated from another development category available for allocation on the lot.

Section 28.85.030 Development Plan Review Procedures.

A. DEVELOPMENT PLAN APPLICATION SUBMISSION. Before any project requiring approval of a development plan pursuant to this Chapter is hereafter permitted in any zone, including zones at the Santa Barbara Municipal Airport, a complete development

plan application for the proposed development shall be submitted to the Community Development Department for review and consideration in accordance with the provisions of this Chapter.

B. REVIEW BY PRE-APPLICATION REVIEW TEAM. All nonresidential construction projects involving the construction, addition, or conversion of more than 3,000 square feet of nonresidential floor area and all transfers of existing development rights, regardless of size, shall be reviewed by the Pre-Application Review Team as provided in Section 27.07.070 of this Code.

C. DEVELOPMENT PLAN APPROVAL REQUIREMENTS. Except as otherwise specified in this Subsection C, all nonresidential construction projects and all Transfers of Existing Development Rights require approval of a Development Plan.

1. Design Review Approval. Any nonresidential construction project that involves the construction, addition, or conversion of more than one thousand (1,000) square feet of new nonresidential floor area and not more than three thousand (3,000) square feet of new nonresidential floor shall require approval of the design of a development plan from the Architectural Board of Review, or from the Historic Landmarks Commission if the property is located within El Pueblo Viejo Landmark District or another landmark district, or if the structure is a designated City Landmark.

2. Staff Hearing Officer Approval. Any nonresidential construction project that involves the construction, addition, or conversion of more than one thousand (1,000) square feet of new nonresidential floor area and not more than three thousand (3,000) square feet of new nonresidential floor area and which also requires approval of a City discretionary land use permit from the Staff Hearing Officer shall require approval of a development plan from the Staff Hearing Officer.

3. Planning Commission Approval. The following projects shall require approval of a development plan from the Planning Commission:

a. Any nonresidential construction project (including a public utility facility) that involves the construction, addition, or conversion of more than three thousand (3,000) square feet of new nonresidential floor area, or

b. Any transfer of existing development rights that involves the construction, addition, or conversion of more than one thousand (1,000) square feet of nonresidential floor area (as an aggregate total of all development categories) on the receiving site, or

c. Any nonresidential construction project that involves the construction, addition, or conversion of more than one

thousand (1,000) square feet of new nonresidential floor area and not more than three thousand (3,000) square feet of new nonresidential floor area and which requires approval of another land use permit from the Planning Commission shall require approval of a development plan from the Planning Commission.

d. Notwithstanding the review assignments specified in Paragraphs 1 and 2 above, any nonresidential construction project or transfer of existing development rights that requires the preparation of an Environmental Impact Report shall be reviewed by the Planning Commission.

4. Exceptions. Unless the project requires the preparation of an Environmental Impact Report, the following projects do not require the approval of a development plan:

a. A nonresidential construction project that involves the construction, addition, or conversion of not more than 1,000 square feet of nonresidential floor area (as an aggregate total of all development categories), or

b. A Transfer of Existing Development Rights that involves the construction, addition, or conversion of nonresidential floor area so long as the project will not result in more than 1,000 square feet of nonresidential floor area over the amount of nonresidential floor area that existed on the lot as of April 11, 2013. This exception is not available for a Transfer of Existing Development Rights that involves the transfer of a hotel room on a room-for-room basis.

[Editorial Comment - Not Part of the Ordinance. The following is an excerpt from Section 28.87.300 of the Municipal Code. Section 28.87.300 is proposed to be deleted in its entirety. This excerpt is included to show the City Council how the Standards of Review are being amended in the proposed new Section 28.85.040 which follows.]

~~D. STANDARDS FOR REVIEW. Unless specifically exempt, the following findings shall be made in order to approve a development plan submitted pursuant to this Section.~~

~~1. Findings:~~

~~a. The proposed development complies with all provisions of this Title; and~~

~~b. The proposed development is consistent with the principles of sound community planning; and~~

~~c. The proposed development will not have a significant adverse impact upon the neighborhood's aesthetics/character in that the size, bulk or scale of the development will be~~

compatible with the neighborhood; and

d. The proposed development will not have a significant unmitigated adverse impact upon City and South Coast affordable housing stock; and

e. The proposed development will not have a significant unmitigated adverse impact on the City's water resources; and

f. The proposed development will not have a significant unmitigated adverse impact on the City's traffic; and

g. Resources will be available and traffic improvements will be in place at the time of project occupancy.

2. Potential for Overriding Considerations:

a. A finding of significant adverse impact under Subparagraph 1.c above can be overridden if it is determined that the economic, social or public benefits of the proposed development outweigh its significant adverse impacts.

b. A finding of significant adverse impact under Subparagraphs 1.a or 1.b above cannot be overridden.

c. A finding of unmitigated significant adverse impact under Subparagraphs 1.d, 1.e, 1.f, or 1.g above for a Minor Addition Project, Government Displacement Project or that portion of a project which qualifies as a Government Displacement Project, a Community Priority Project, and an Approved Project or Revision thereto can be overridden if it is determined that the benefits of the proposed development outweigh its significant adverse impacts.

3. Exception. Notwithstanding any provision of this Section to the contrary, a development plan shall not be denied based on a finding pursuant to Subparagraph 1.d of this Subsection E if (i) the plan incorporates revisions to a development plan approved by the Planning Commission under this Section prior to February 25, 1988, and (ii) the project shown on the plan will not generate a demand for new housing in excess of the demand generated by the previously approved project.

Section 28.85.040 Standards for Review - Development Plans.

The following findings shall be made prior to approving any development plan pursuant to this Chapter:

A. The proposed development complies with all provisions of this Title; and

B. The proposed development is consistent with the principles of sound community planning; and

C. The proposed development will not have a significant adverse impact upon the community's aesthetics or character in

that the size, bulk or scale of the development will be compatible with the neighborhood based on the Project Compatibility Analysis criteria found in Sections 22.22.145 or 22.68.045 of this Code; and

D. The proposed development is consistent with the policies of the City of Santa Barbara Traffic Management Strategy (as approved by City Resolution No. ___ dated as of March 12, 2013) as expressed in the allocation allowances specified in SBMC Section 28.85.050.

Section 28.85.050 Traffic Management Strategy.

In order to utilize the City's existing transportation capacity efficiently and to prioritize constrained transportation capacity for high priority land uses, the City has established a Traffic Management Strategy (as approved by City Resolution No. ___ dated as of March 12, 2013.) In furtherance of the Traffic Management Strategy and recognizing the differential rates of traffic generation observed in the City of Santa Barbara Traffic Model methodology (as used in connection with the preparation of the General Plan FEIR) between the different Development Areas, only certain categories of nonresidential development are available for allocation within the Development Areas identified in this Section.

A. DOWNTOWN DEVELOPMENT AREA. If all of the floor area for a project is proposed from a category or categories of development that are available for allocation within the development area in which the proposed project is located, the project's contribution to a potentially significant adverse cumulative traffic impact may be overridden by the Planning Commission. Within the Downtown Development Area, unless specifically authorized below, a project-specific potentially significant adverse traffic impact cannot be overridden by the Planning Commission. The following categories of nonresidential development are available for allocation to lots within the Downtown Development Area:

1. Prior-Approved Projects. Prior-Approved projects do not require further environmental review.

2. Prior-Pending Projects.

3. Prior-Approved Specific Plan Projects. A Prior-Approved Specific Plan Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

4. Minor Addition Floor Area. A project constructing,

adding, or converting Minor Addition Floor Area that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

5. Small Addition Floor Area.

6. Vacant Property. A Vacant Property Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

7. Community Priority Projects. A Community Priority Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

8. Economic Development Projects.

9. Transfers of Existing Development Rights (TEDR), as defined in Section 28.95.020 of this Code, from any Development Area.

a. A Transfer of Existing Development Rights between lots within the same Development Area that will result in the construction, addition, or conversion of not more than 1,000 square feet of nonresidential floor area over the amount of nonresidential floor area that existed on the receiving lot as of the effective date of this ordinance and that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

b. All other Transfers of Existing Development Rights (including Hotel Room for Room Replacements) that result in a project-specific potentially significant adverse traffic impact cannot be overridden.

10. Hotel Room for Room Replacement. An on-site Hotel Room for Room Replacement that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

11. Demolition and Reconstruction of Existing Nonresidential Floor Area on the same lot. The Demolition and Reconstruction of Existing Nonresidential Floor Area on the same lot that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning

Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

12. City Government Buildings. A government building project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

13. Government Displacement Floor Area. A Government Displacement Floor Area Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

14. Public Utility Facilities. A Public Utility Facility that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

B. UPPER STATE STREET, MESA, COAST VILLAGE ROAD, AND RIVIERA DEVELOPMENT AREAS (OUTLYING DEVELOPMENT AREAS). If all of the floor area for a project is proposed from a category or categories of development that are available for allocation within the development area in which the proposed project is located, the project's contribution to a significant cumulative traffic impact may be overridden. Within the Outlying Development Areas, unless specifically authorized below, a project-specific potentially significant adverse traffic impact cannot be overridden by the Planning Commission. The following categories of nonresidential development are available for allocation to lots within the Outlying Development Areas:

1. Prior-Approved Projects. Prior-Approved Projects do not generally require further environmental review.

2. Prior-Pending Projects.

3. Prior-Approved Specific Plan Projects. A Prior-Approved Specific Plan Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

4. Minor Addition Floor Area. A project constructing, adding, or converting Minor Addition Floor Area that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the

manner authorized by C.E.Q.A.

5. Vacant Property. A Vacant Property Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

6. Community Priority Projects. A Community Priority Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

7. Transfer of Existing Development Rights (including Hotel Room for Room Replacements), as defined in Section 28.95.020 of this Code, from and to lots within the same Development Area. No ~~receiving~~ ~~ssite~~ located in an Outlying Development Area may receive a Transfer of Existing Development Rights from a sending site that is located in another Development Area.

a. A Transfer of Existing Development Rights between real properties within the same Development Area that will result in the construction, addition, or conversion of not more than 1,000 square feet of nonresidential floor area over the amount of nonresidential floor area that existed on the receiving lot as of April 11, 2013 and that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

b. All other Transfers of Existing Development Rights (including Hotel Room for Room Replacements) that result in a project-specific potentially significant adverse traffic impact cannot be overridden by the Planning Commission.

8. Demolition and Reconstruction of Existing Nonresidential Floor Area on the same parcel. The Demolition and Reconstruction of Existing Nonresidential Floor Area on the same lot that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

9. Government Buildings. A government building that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

10. Government Displacement Project. A Government

Displacement Floor Area Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

11. Hotel Room for Room Replacement. An on-site Hotel Room for Room Replacement that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

12. Public Utility Facilities. A Public Utility Facility that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

13. Planned Development – New Automobile Sales Project. A Planned Development-New Automobile Sales Project that presents a project-specific potentially significant adverse traffic impact may be approved by the Planning Commission following the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A.

C. AIRPORT DEVELOPMENT AREA. If all of the floor area for a project is proposed from a category or categories of development that are available for allocation within the development area in which the proposed project is located, the project's contribution to a significant cumulative **adverse** traffic impact may be overridden by the Planning Commission. Within the Airport Development Area, unless specifically stated below, a project-specific potentially significant adverse traffic impact may be overridden by the Planning Commission with the adoption of a Statement of Overriding Considerations in the manner authorized by C.E.Q.A. The following categories of nonresidential development are available for allocation to real properties within the Airport Development Area:

1. Prior-Approved Projects.
2. Prior-Pending Projects.
3. Prior-Approved Specific Plan Projects.
4. Minor Addition Floor Area.
5. Small Addition Floor Area.
6. Vacant Property.
7. Community Priority Projects.
8. Economic Development Projects.
9. Transfers of Existing Development Rights (including Hotel Room for Room Replacements), as defined in Section

28.95.020 of this Code, from and to lots within the Airport Development Area are available for allocation. No Receiving Site located in the Airport Development Area may receive a Transfer of Existing Development Rights (including Hotel Room for Room Replacements) from a Sending Site that is located in another Development Area.

10. Demolition and Reconstruction of Existing Nonresidential Floor Area on the same lot.

11. Government Buildings.

12. Government Displacement Projects.

13. Public Utility Facilities.

Section 28.85.060 Development Plan Notice and Hearing.

If a nonresidential construction project or transfer of existing development rights requires the approval of a development plan by the Architectural Board of Review, Historic Landmarks Commission, Staff Hearing Officer, Planning Commission, or the City Council on appeal, the Architectural Board of Review, Historic Landmarks Commission, Staff Hearing Officer, Planning Commission, or City Council shall hold a public hearing prior to taking action on any development plan. Notice of the public hearing shall be given in accordance with Section 28.87.380.

Section 28.85.070 Appeals.

A decision by the Architectural Board of Review, the Historic Landmarks Commission, or the Planning Commission under this Chapter may be appealed according to the provisions of Chapter 1.30. A decision by the Staff Hearing Officer under this Chapter may be appealed according to the provisions of Section 28.05.020 of this Code.

Section 28.85.080 Fees.

Fees for filing applications and appeals in accordance with this Chapter shall be established by resolution of the City Council.

Section 28.85.090 Development Plan Time Limits.

Subject to the adjustments for projects with multiple approvals specified in Section 28.87.370 of this Code, development plan approvals shall have the following time limits:

A. TIME LIMIT. A development plan approved pursuant to any provision of this Title shall expire four (4) years from the date of its approval, except as otherwise provided herein. No building or grading permit for any work authorized by a development plan shall be issued following expiration of that plan.

B. CONDITIONS. Any condition imposed on a development plan may, in the discretion of the body approving the development plan, also constitute (i) a condition to the issuance of and continued validity of any building or grading permit issued to implement that development plan, (ii) a condition to the issuance of the certificate of occupancy with respect to any improvements authorized by the development plan and (iii) if recorded with the County Recorder, to the continued validity of the certificate of occupancy. Violation of any such condition shall be grounds for suspension or revocation of any building or grading permit or certificate of occupancy issued with respect to the development plan.

C. EXTENSION OF TIME PERIOD. Upon application of the developer filed prior to the expiration of the development plan, the time at which the development plan expires may be extended by the Community Development Director for one (1) year. An extension of the expiration date of a development plan shall be granted if it is found that there has been due diligence to implement and complete the proposed project as substantiated by competent evidence in the record.

D. SUSPENSION OF TIME DURING MORATORIUM. The period of time specified in Subsection A, including any extension thereof granted pursuant to Subsection C, shall not include any period of time during which a moratorium, imposed after approval of the development plan, is in existence, provided however, that the length of the moratorium does not exceed five (5) years. For purposes of this Subsection, a development moratorium shall include (i) a water or sewer moratorium, (ii) a water and sewer moratorium, and (iii) a building or grading permit moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land other than the City, which thereafter prevents, prohibits, or delays the completion of the development. Once a moratorium is terminated, the development plan shall be valid for the same period of time as was left to run on the development plan at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the development plan shall be valid for 120 days following the termination of the moratorium.

E. SUSPENSION OF TIME DURING LITIGATION. The period of time

specified in Subsection A, including any extension thereof granted pursuant to Subsection C, shall not include the period of time during which a lawsuit involving the approval of the development plan or related approvals is or was pending in a court of competent jurisdiction. After service of the initial petition or complaint in the lawsuit upon the City, the applicant may advise the City of the need for a litigation tolling stay pursuant to the City's adopted procedures.

F. DEVELOPMENT PLANS ALREADY APPROVED.

1. Beginning Date – Development Plan Approvals. The adoption of this ordinance shall not alter the date of approval of a Development Plan approved prior to the adoption of this ordinance.

2. Specific Plan Development Plan Approvals. For the purposes of calculating the expiration date of a Specific Plan project Development Plan approved in accordance with Santa Barbara Municipal Code Chapter 29.30, Development Plan approvals shall be deemed to expire eight (8) years after the date of the final City action approving the project Development Plan and shall include any related project approvals or modifications granted by the City in connection therewith.

G. DISPOSITION OF FLOOR AREA ALLOCATED TO EXPIRED PROJECTS.

For projects with floor area allocated from the Small Addition category, the unused floor area shall be made available for allocation to Small Addition or Community Benefit Projects, as determined by Planning Commission Resolution, upon expiration of the development plan. For projects with floor area allocated from the Community Benefit and Vacant Property categories, the unused floor area shall revert to the category from which the floor area was allocated upon expiration of the development plan. Floor area that was excluded from the development limit specified in Section 28.85.010 under the Prior-Approved or Prior-Pending categories shall expire upon expiration of the project's Development Plan and shall not be available for another allocation.

Section 28.85.100 Multiple Development Plans.

When more than one valid approved development plan exists for a lot, upon issuance of a building or grading permit for any work authorized by one of the approved development plans, all other development plans approved for that lot are deemed abandoned by the property owner. No building or grading permit shall be issued for any work authorized by a development plan following abandonment of that plan. For projects with floor

area allocated from the Small Addition category, any unused floor area shall be made available for allocation to the Small Addition category or the Community Benefit Project category upon abandonment of a development plan. For projects with floor area allocated from the Community Benefit and Vacant Property categories, any unused floor area shall revert to the category from which the floor area was allocated upon abandonment of a development plan.

SECTION 2. Section 28.87.300 of Chapter 28.87 of Title 28 of the Santa Barbara Municipal Code is repealed in its entirety.

SECTION 3. Section 28.87.350 of Chapter 28.87 of Title 28 of the Santa Barbara Municipal Code is repealed in its entirety.

SECTION 4. Sections 28.95.010 through 28.95.070 of Chapter 28.95 of Title 28 of the Santa Barbara Municipal Code are hereby amended to read as follows:

Section 28.95.010 Purposes.

A. To ensure a strong economy by providing a voluntary mechanism which would allow the transfer of existing nonresidential development rights from certain properties to certain other properties within the City, thereby encouraging economic vitality.

B. To encourage new development, but not new floor area, in a manner consistent with [Charter Section 1508the City Nonresidential Growth Management Program Ordinance \(S.B.M.C. Chapter 28.85\) and Traffic Management Strategy \(as approved by City Resolution No. ___ and dated as of March 12, 2013.\)](#)

C. To promote the efficient use of under used space, and creative re-use of existing buildings.

D. To encourage uses compatible with surrounding areas.

E. To provide flexibility and opportunities for redirecting growth within the growth cap.

F. To encourage the development of a balanced community with economic diversity.

G. To stimulate revitalization of existing commercial areas of the City.

H. To accommodate large scale development that is consistent with [Charter Section 1508the City Nonresidential Growth Management Program Ordinance \(S.B.M.C. Chapter 28.85\) and](#)

Traffic Management Strategy (as approved by City Resolution No. ___ and dated as of March 12, 2013.)-

I. To encourage the construction of housing.

28.95.020 Definitions.

A. Existing Development Rights consist of the following:

1. Existing Floor Area. The amount of nonresidential floor area of existing structures on a sending site; and

2. Approved Floor Area. Nonresidential floor area which has received all discretionary approvals from the City prior to the date of application for a transfer, provided that none of those approvals has expired prior to the date of such application; and

3. Demolished Floor Area. Nonresidential floor area of a structure, demolished after October 1988 and not subsequently reconstructed, and

4. Converted Floor Area. Nonresidential floor area of a structure, which has been permanently converted from nonresidential use to a residential use after October 1988.

Existing Development Rights may be aggregated from the above four categories but not so as to increase floor area above the amount allowed by Charter Section 1508 and its implementing ordinances~~the City Nonresidential Growth Management Program Ordinance (S.B.M.C. Chapter 28.85)~~.

A transfer of Existing Development Rights shall transfer to the receiving site only nonresidential floor area ~~governed by City Charter Section 1508 and implementing ordinances regulated by the City Nonresidential Growth Management Program Ordinance (S.B.M.C. Chapter 28.85)~~, and shall not transfer any other right, permit or approval. A transfer of Existing Development Rights shall not transfer credit for resource use by existing development on the sending site to the receiving site for purposes including but not limited to environmental review, development fees, or conditions of approval. The traffic impacts of a proposed transfer of Existing Development Rights shall be analyzed using the approved "City of Santa Barbara Traffic Model" as such Model has most recently been approved by a resolution of the City Council. Existing Development Rights shall be measured in square feet of floor area, except that hotel and motel rooms may be measured by room when Existing Development Rights are developed as hotel or motel rooms on the receiving site, ~~and in all other cases shall be measured in square feet of floor area.~~ Hotel and motel rooms which are approved ~~and not developed~~but not constructed at the time of

transfer approval shall be measured only in square feet of floor area.

B. Floor Area. "Floor area" is defined in Section ~~28.87.300.B.4~~28.85.020.

C. Hotel or Motel Room. A hotel or motel room includes only that floor area within the walls of rooms let for the exclusive use of individuals as a temporary abiding place, and does not include any other areas. No replacement room shall be designed for rental or rented as more than one separate accommodation.

D. Nonresidential Floor Area. Floor area is "nonresidential" if the Community Development Director determines that the floor area was used exclusively for nonresidential purposes in October, 1988; or that the floor area was vacant in October of 1988 and the ~~latest~~last use of the floor area prior to the proposed transfer was nonresidential ~~in nature~~; or that the floor area was approved for nonresidential purposes as described in Paragraph A.2 above.

E. Receiving Site. A site to which Existing Development Rights are transferred.

F. Sending Site. A site from which Existing Development Rights are transferred.

G. Transfer of Existing Development Rights. The transfer of Existing Development Rights as defined in Subsection A above from a sending site to a receiving site. Existing Development Rights may be transferred by sale, exchange, gift or other approved legal means, but such transfer shall not be effective until the ~~Planning Commission, or City Council on appeal, City~~ has approved the transfer in accordance with the provisions of this Chapter and the City's Nonresidential Growth Management Program, as specified in S.B.M.C. Chapter 28.85, and the conditions of the transfer have been duly satisfied.

Section 28.95.030 Approval of Transfer of Existing Development Rights.

A. Application Review. The application(s) and supporting documentation submitted by the applicant(s) shall be reviewed by the Community Development Department. If the application(s) for processing are determined to be complete by the Community Development Department, the applicant(s) shall proceed in accordance with the standard application process in place at the time of submittal.

B. Transfer Approval. Existing Development Rights may be transferred from ~~s~~Sending ~~s~~Site(s) to ~~r~~Receiving ~~s~~Site(s)

pursuant to the provisions of this Chapter and any guidelines adopted by a resolution of the City Council ~~resolution pursuant to in order to effectuate the purposes of~~ this Chapter. ~~Development plan proposals for the sending site(s) and the receiving site(s) shall receive a single transfer approval, in addition to all other discretionary approvals required, and shall be considered one "project" for purposes of environmental analysis.~~

After approval, any change in the project, at either the ~~s~~Sending ~~s~~Site(s) or ~~r~~Receiving ~~s~~Site(s) which is not determined by the Planning Commission and/or the Community Development Director to be in substantial conformity with the approved project, shall be a new project and require a new application, review, and approval and/or disapproval. No transfer or receipt of Existing Development Rights shall be valid or effective unless the transfer and receipt, and development plans for both the ~~s~~Sending ~~s~~Site(s) and ~~r~~Receiving ~~s~~Site(s), comply with all requirements of this Municipal Code and have been reviewed and approved by the City in accordance with the provisions of this Chapter and the City's Nonresidential Growth Management Program, as specified in S.B.M.C. Chapter 28.85, Planning Commission, or City Council on appeal, and all applicable conditions to the transfer have been satisfied.

C. Community Priorities. Any Existing Development Rights approved as a community priority on a sending site may be transferred only if the new development on the receiving site is also approved as a community priority.

D. Multiple Sending and Receiving Sites. Existing Development Rights may be transferred from more than one sending site to a single receiving site. Existing Development Rights may be transferred from one sending site to more than one receiving site.

E. Compliance with Approved Traffic Management Strategy. Every transfer of Existing Development Rights must comply with the City's Council-approved Traffic Management Strategy as implemented in Section 28.85.050 of this Code. Any Existing Development Rights proposed for transfer must qualify for allocation at the Receiving Site.

Section 28.95.040 Amount of Existing Development Rights That Can Be Transferred from a Sending Site to a Receiving Site.

A. The total amount of Existing Development Rights that can be

transferred to a receiving site is subject to the applicable zoning of that receiving site, provisions of the Municipal Code, and any and all other applicable City rules and regulations.

B. The total amount of Existing Development Rights that can be transferred from a sending site is equal to the difference between the eliminated floor area on the sending site and the floor area of all nonresidential structures constructed or proposed to be constructed on the sending site.

Section 28.95.050 Development Plan Approval.

The following Transfers of Existing Development Rights must receive Development Plan approval by the Planning Commission, or the City Council on appeal:

A. Any transfer of more than 1,000 square feet of Existing Development Rights from a sending site,

B. Any transfer that involves the transfer of a hotel room on a room-for-room basis, and

C. ~~a~~Any project using that is constructing, adding, or converting more than 1,000 square feet of nonresidential floor area on a Receiving Site and which includes any amount of transferred Existing Development Rights ~~must receive development plan approval by the Planning Commission, or the City Council on appeal.~~ Once a Development Plan is approved for a Sending Site, the Sending Site Development Plan approval may be used for subsequent transfers of Existing Development Rights from the Sending Site as long as the Community Development Director determines that the condition of the Sending Site following such subsequent transfers will substantially conform to the original Development Plan approval.

Section 28.95.060 Review and Findings.

The Planning Commission, or the City Council on appeal, shall review each application for a transfer of Existing Development Rights and shall not approve any such transfer unless it finds that:

A. The proposed development plans for both the Sending and Receiving Sites are consistent with the goals and objectives of the General Plan of the City of Santa Barbara and the Municipal Code; and

B. The proposed developments will not be detrimental to the site(s), neighborhood or surrounding areas; and

C. The floor area of proposed nonresidential development on the Receiving Site does not exceed the sum of the amount of

Existing Development Rights transferred when added to the amount of Existing Development Rights on the Receiving Site, and does not exceed the maximum development allowed by the applicable zoning of the Receiving Site.

D. Each of the proposed nonresidential developments on the respective Sending Site(s) and Receiving Site(s) will meet all standards for review as set forth in Section ~~28.87.300.E~~ 28.85.040 of the Municipal Code and all provisions of this Chapter, and will comply with any additional specific conditions for a transfer approval.

E. Development remaining, or to be built, on a Sending Site is appropriate in size, scale, use, and configuration for the neighborhood and is beneficial to the community.

Section 28.95.070 Conditions of Approval.

A. The Planning Commission, or the City Council on appeal, shall require conditions of Development Plan approval for plans submitted for Sending and Receiving Sites. Conditions may include, but are not limited to a development agreement, as defined in State law, executed by the City and the Sending Site owner or the Receiving Site owner, or both. The Planning Commission, or the City Council on appeal, may impose other conditions and restrictions upon the proposed Development Plans and transfer approval consistent with the General Plan and may require security to assure performance of all conditions and restrictions.

B. The Planning Commission, or City Council on appeal, shall require, as conditions of Development Plan approval for plans submitted for the Sending and Receiving Sites that:

1. Whenever a Sending Site owner is required by this Chapter to offer to dedicate the Sending Site to the City or other governmental entity approved by the City, and the floor area to be transferred will be eliminated by demolition, a Sending Site owner shall make such offer prior to issuance of a demolition permit for the Sending Site. If the City or other governmental entity approved by the City rejects said offer of dedication, the Planning Commission approval iswill be considered null and void; and

2. Any Existing Development Rights, measured in square feet of floor area, and/or number of hotel or motel rooms when appropriate, and whether such Existing Development Rights derive from existing, approved, demolished or converted floor area, shall be clearly and accurately designated on both the Sending and Receiving Site Development Plans; and

3. Prior to issuance of any necessary permit relating to any Existing Development Rights approved for transfer from a Sending Site, the option, deed, easement, covenant, or other legal instrument by which the existing development rights are being transferred, and proof of recordation of the Development Plan for both Sending and Receiving Sites shall be reviewed and approved by the Community Development Director.

4. Proof of the elimination of the transferred floor area from the Sending Site must be reviewed and approved by the Community Development Director prior to recordation of the approved instrument of transfer. The City shall be a party to the instrument of transfer in a manner acceptable to the City Attorney; and

5. Prior to the issuance of any building permit for the project proposed on the Receiving Site pursuant to this Chapter, proof of recordation of the transfer instrument, and proof of elimination of the Existing Development Rights on the Sending Site shall be accepted as satisfactory by the Community Development Director.

C. The Community Development Director, or the Director's designee, shall require the satisfaction of the following conditions prior to the issuance of any necessary permit relating to any transfer of existing development rights that did not require the approval of the development plan pursuant to this Chapter or Chapter 28.85:

1. Whenever a Sending Site owner is required by this Chapter to offer to dedicate the Sending site to the City or other governmental entity approved by the City, and the floor area to be transferred will be eliminated by demolition, a Sending Site owner shall make such offer prior to issuance of a demolition permit for the Sending Site. If the City or other governmental entity approved by the City rejects said offer of dedication, the transfer will be considered null and void; and

2. Any Existing Development Rights, measured in square feet of floor area, and whether such Existing Development Rights derive from existing, approved, demolished or converted floor area, shall be clearly and accurately designated on both the Sending and Receiving Site Development Plans; and

3. The option, deed, easement, covenant, or other legal instrument by which the existing development rights are being transferred shall be reviewed and approved by the Community Development Director and the City Attorney as to form. The City shall be a party to the instrument of transfer; and

4. Proof of the elimination of the transferred floor area

from the Sending Site must be reviewed and approved by the Community Development Director prior to recordation of the approved instrument of transfer; and

5. Proof of recordation of the transfer instrument, and proof of elimination of the Existing Development Rights on the Sending Site shall be accepted as satisfactory by the Community Development Director.

SECTION 5. The City Clerk is hereby authorized to amend various references to the prior Section 28.87.300 found throughout Titles 28 and 29 to reference the new Chapter 28.85 as approved by the City Attorney.