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Alt: Aurelia Friedman
Alt: open

November 23, 2010

Los Angeles City Planning Commission
Los Angeles City Hall, Room 532
200 N. Spring Street
Los Angeles, CA 90012

VIA FAX: 213- 978-1029 Pages: 5
VIA EMAIL: James.k.williams@lacity.org

RE: Proposed Core Findings Ordinance - **CPC – 2010-1572-CA**

Dear Planning Commissioners:

The Pacific Palisades Community Council (PPCC) has been the recognized voice of Pacific Palisades since 1973.

On November 18, 2010 PPCC unanimously passed a motion (attached), that on condition that the recommended changes set forth herein are incorporated, supports the Planning Department's Core Findings Ordinance.

PPCC commends the Planning Departments efforts to streamline and clarify the code.

Our land use committee, which includes a former City Attorney for the City of Beverly Hills, as well as two other attorneys well versed in land use issues, has recommended language changes and other suggestions, approved by PPCC's Board of Governors, that we believe will enable the City to achieve its goal while keeping protections in place.

In the attached Exhibit A to the Motion, we give specific examples of how the current wording of some of the proposed Core Findings would dilute protections of our Community and Specific Plans which the Planning Department, along with the community, worked diligently to put into place.

PPCC also found that some of wording of the proposed Core Findings could have a potential negative impact on the regulation of hillside development, on public safety, on environmental and other substantive protections afforded citizens under long-standing consistent and predictable application of planning and zoning regulations.

In addition, PPCC is very concerned about the element of subjectivity in the decision- making process that has been arguably increased by the proposed Core Findings Ordinance and may result in the inconsistent application of the Code. Our suggestions would eliminate subjectivity and potential inconsistent application of the Code.

PPCC welcomes the opportunity to build on the hard work, intelligent analysis and serious efforts of the Planning Department, and provide additional input to the code reform process and resulting ordinances. Set the time and place and we will be there.

Sincerely,

Janet Turner, Chair
310-496-9896

Encl: Motion and Exhibit A



PACIFIC PALISADES COMMUNITY COUNCIL

MOTION – PROPOSED ZONING CODE SIMPLIFICATION ORDINANCE; CPC – 2010-1572-CA (“ORDINANCE”)

THE ORDINANCE – Chris Spitz, Barbara Kohn, Jack Allen and Jennifer Malaret. Upon motion on November 18, 2010 by Chris Spitz, seconded by Gil Dembo, the Council approved the following resolution:

PACIFIC PALISADES COMMUNITY COUNCIL RESOLUTION RELATED TO THE ORDINANCE -

WHEREAS, the City of Los Angeles proposes to modify Chapter 1 of the Los Angeles Municipal Code (“LAMC”, “Zoning Code” or “Code”) Sections 11.5.7, 12.03, 12.24, 12.28, 12.32, 12.81, 13.03, 13.07, 14.3.1, 16.01, AND 16.05 to update common findings for conditional uses, adjustments and other quasi-judicial land use approvals.

WHEREAS, Pacific Palisades Community Council (“PPCC”) has been the official voice of the Pacific Palisades community since 1973. PPCC understands the Planning Department’s primary goal in proposing the first of six “code reform ordinances” is to “streamline the development process” (Staff Report, p. 9) while not eliminating “any criteria that protects [sic] the citizenry from inappropriate land uses” (Staff Report, p. 3). This is an admirable goal, and PPCC supports reasonable efforts to clarify the Zoning Code, enhance consistency and eliminate unnecessary redundancies.

WHEREAS, PPCC seeks to provide input to the code reform process and resulting ordinances to uphold the hard work, intelligent analysis and serious efforts of the Planning Department and public in creating the existing specific plans, overlays and community plans.

WHEREAS, on condition that the recommended changes set forth herein are incorporated, PPCC supports the Ordinance. PPCC reserves the right to submit additional comments or supplemental Motion(s) regarding the impact of the Ordinance as more information becomes available.¹

RECOMMENDED MODIFICATIONS:

1. PPCC recommends modifying the Ordinance pursuant to EXHIBIT A attached hereto because of the following concerns:

(a) PPCC is very concerned about the potential negative impact of the Ordinance on the implementation of our Community and Specific Plans, on the regulation of hillside development, on public safety, on environmental and other substantive protections afforded citizens under long-standing consistent and predictable application of planning and zoning regulations, and on meaningful, coherent administrative and judicial review. PPCC’s goal is to guarantee these protections and processes to every extent possible.

¹ This is a complicated matter with the potential for serious impacts on current Code protections. While PPCC commends Planning Staff for conducting recent workshops and information sessions on the Ordinance, additional workshops may be necessary. PPCC has participated and will continue to participate in constructive dialogue with the Planning Department in this regard.

- (b) PPCC is very concerned about the element of subjectivity in the decision-making process that has been arguably increased and may result in the inconsistent application of the Code throughout the City. PPCC’s goal is to eliminate subjectivity and potential inconsistent application of the Code to the extent possible.
2. **PPCC recommends that all provisions of the Ordinance applicable to hillside-related provisions of the Code be stricken until after the Baseline Hillside Ordinance (“BHO”) is passed and the Planning Department and public have had an opportunity to examine the proposed changes in light of the BHO.** PPCC objects to the Ordinance modifying hillside sections of the Code without consideration of the BHO, which PPCC supports and which the City Attorney is currently drafting. The proposed revisions to hillside sections of the Code are premature in light of the status of the BHO.
 3. **PPCC recommends that in every sub-section requiring additional findings the following language be inserted: “In addition to the findings set forth in Section 12.24.E, the Zoning Administrator shall also find:”** PPCC objects to the fact that the Ordinance does not clearly apprise readers unfamiliar with the Code of all of the actual findings required for a particular use. This change promotes clarity and transparency in the Zoning Code.
 4. **PPCC recommends that the Planning Department modify Sec. 18 – LAMC Sec. 12.24 X (Authority of the Zoning Administrator).** PPCC concurs with the proposed language deletion; however, the failure to provide consistent, alternative language for the stricken words creates a lack of clarity as to whether the Zoning Administrator’s authority shall apply to the new Core Findings #4, #5, #6 and/or #7.
 5. **PPCC recommends that the Ordinance not remove findings for automotive uses, mini-shopping centers and commercial corner developments which restrict them from locating in “an identified pedestrian oriented, commercial and art craft, community design overlay, historic preservation overlay or transit-oriented district area or zone, or that the [use] would be consistent with the district, area or zone . . .”** PPCC finds no apparent redundancy in the Code. Accordingly, and because current CUP findings appear to make good urban land planning sense, PPCC recommends that Sec. 12 – LAMC Sec. 12.24.W.4(b)(4) and Sec. 13 – Sec. 12.24.W.27(b)(4) remain as written.
 6. **PPCC recommends delaying the implementation and effectiveness of the Code changes resulting from the adoption of the Ordinance until such time as the remaining five to-be-proposed ordinances have been drafted, noticed, analyzed, heard and ultimately adopted.** In the interests of fundamental fairness, due process and notice, PPCC is very concerned about the unknown impact of the remaining five to-be-proposed ordinances which Planning Staff indicates are ultimately to be viewed “in consortium” with the Ordinance; however, none of these five proposed ordinances have yet been drafted or examined by the public.

EXHIBIT A - PPCC MODIFICATIONS TO CPC-2010-CA

1. The Public Benefit (aka “Neighborhood Enhancement”)² Core Finding:

- ORDINANCE: The Neighborhood Enhancement Core Finding: That the project will enhance the environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region.
- PPCC REVISION: **The Public Benefit Core Finding:** That the project **shall** enhance the environment in the surrounding neighborhood or perform a function or provide a service that is essential or beneficial to the community, city, or region. (LAMC Sec. 12.24.E (1)).
- REASONS FOR MODIFICATIONS AND SUGGESTED CHANGES:
 - (a) The term “shall” more clearly conveys the mandatory nature of this finding than the term “will”; see also LAMC Sec. 11.01;
 - (b) PPCC objects to the re-writing of Sec. 2 – LAMC Sec. 11.5.7.E.3 (a). For Project Permit Adjustments, the current Code requires a finding “of special circumstances applicable to the project or the project site which makes strict application of the specific plan regulation impractical.” This language has been judicially tested (Topanga Assn. for a Scenic Comm. v. County of Los Angeles (1974) 11 Cal.3d 506)³ and provides a stricter standard and use-specific finding than the proposed Core Finding #1 language.⁴

2. The Neighborhood Compatibility (aka “Project Compatibility”)⁵ Core Finding:

- ORDINANCE: The Project Compatibility Core Finding: That the project’s location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade the surrounding neighborhood.
- PPCC REVISION: The **Project / Neighborhood Compatibility Core Finding:** That the project’s location, size, height, operations and other significant features **shall** be compatible with **the scale and character of** and not adversely affect or further degrade the **adjacent and** surrounding neighborhood **or the public health, welfare, safety or physical environment.** (LAMC Sec. 12.24.E (2)).
- REASONS FOR MODIFICATIONS AND SUGGESTED CHANGES:

² Changes in the descriptive titles of both Core Findings #1 and #2 were recommended by consensus at the West LA workshop on 11/13/10 to more accurately reflect the scope and intent of the core finding(s) proposed by the Ordinance.

³ While PPCC recognizes that the authority cited involved a variance issue, the language is far more specific and applicable to this section than the proposed Core Finding. Since PPCC has also recommended the deletion of Core Finding #4 (below), there is no need for Planning to re-write Sec. 11.5.7.E.3 (a) for consistency with Sec. 11.5.7.E.3 (d).

⁴ This is particularly true because PPCC recommends deletion of Core Finding #4 which shall then no longer be substituted for Sec. 2 – Sec. 11.5.7.E.3 (d) as the Ordinance has proposed.

⁵ SEE FN #2.

PPCC MOTION – Proposed Zoning Code Simplification Ordinance; CPC-2010-1572-CA

- (a) The term “shall” more clearly conveys the mandatory nature of this finding than the term “will”; see also LAMC Sec. 11.01;
- (b) Including the terms “scale” and “character” prevents the Ordinance from weakening existing Code protections for communities and findings relative to automotive uses in the C zones that require exceptions from development standards and operating conditions (Sec. 12 - LAMC Sec. 12.24.W.4 (b)(2));
- (c) Including the terms/phrases “adjacent and surrounding neighborhood” and “or the public health, welfare, safety or physical environment” prevents the Ordinance from weakening existing community protections for findings for certain specific uses such as: (i) Pawn Shops, where the current finding requires the operation “be reasonably compatible with and not be detrimental to the public welfare or injurious to the improvements and uses of adjacent properties” (Sec. 15 – LAMC Sec.12.24.W.33 (b)), (ii) properties that adjoin Farmer’s Markets where the current finding requires that there be “no significant adverse effect on adjoining properties or the immediate neighborhood by reason of noise and traffic congestion” (Sec. 20 - LAMC Sec. 12.24.X.6), and (iii) Elder Care Facilities, where the current finding is that the project will not be “materially detrimental or injurious to properties, []” ((Sec. 32 - LAMC Sec.14.3.1.E(1)).
- (d) PPCC objects to the Ordinance substituting Core Finding #2 for Sec. 2 – LAMC Sec. 11.5.7.E.3(c) on the topic of Project Permit Adjustments unless the existing finding that the adjustment shall have no detrimental effects on “adjacent properties and public rights-of-way” is retained. The removal of this conjunctive requirement weakens the Code and creates ambiguity for decision-makers because the term “public rights-of-way” arguably is not subsumed within the meaning of the term “surrounding neighborhood.”
- (e) PPCC objects to the Ordinance modifying hillside sections of the Code without consideration of the BHO, which PPCC supports and which the City Attorney is currently drafting. The proposed revisions to hillside sections of the Code are premature in light of the status of the BHO – which we have been told by Planning is not expected to be approved prior to January or February of 2011. Furthermore, we believe that the Ordinance, as drafted, presents a threat to public safety & welfare as a result of side yard reductions and emergency access limitations. Accordingly, Sec. 21 – LAMC Sec. 12.24X.10(a)(2), (b)(2), Sec. 22 – LAMC Sec. 12.24.X.11 (b)(2), (d)(2), LAMC Sec. 12.24.X.12(e)(1). Sec. 24 – LAMC Sec. 12.24.X.21 (b)(2), (b)(3) should remain as currently written.

3. The General Plan Core Finding:

- **ORDINANCE:** That the project is in substantial conformance with the purpose, intent and provisions of the General Plan and applicable community and specific plan.
- **PPCC REVISION:** That the project is **consistent** with the purpose, intent and provisions of the General Plan and applicable community and specific plan. (LAMC 12.24.E (3)).
- **REASONS FOR MODIFICATIONS AND SUGGESTED CHANGES:**

PPCC MOTION – Proposed Zoning Code Simplification Ordinance; CPC-2010-1572-CA

- (a) The term “substantial conformance” has not been legally defined when used in zoning ordinances. It would be more appropriate to use the word “compliance” in place of the word “conformance” because courts in land use cases have defined the term “substantial compliance”; however, the term “consistent” as a matter of law means the same as “substantially complies” (Federation of Hillside & Canyon Assns. v. City of Los Angeles (2004) 126 Cal.App.4th 1180, 1194); therefore, we recommend using one word rather than three.
- (b) The substitution of the phrase “is consistent with” narrows the ambiguity for decision- makers when considering community protections for certain important specific uses where the Ordinance as drafted reduces protections. Where Surface Mining Lands are to be reclaimed, Core Finding #3 may not require (as the current Code does) a finding that the mined lands be restored to a usable condition which is readily adaptable for alternative land uses including, and in particular, “the open space and conservation elements.” (Sec. 30 – Sec. LAMC 13.03.G 11(f)).
- (c) Because Redevelopment Plans are specialized in nature and not necessarily subsumed in the General Plan or applicable community or specific plans, PPCC objects to the application of Core Finding #3 to the following sections of the Code which deal specifically with Redevelopment Plans: Major Development Projects (Sec. 7 - LAMC Section 12.24.U.14 (b)(1)) and CUP’s for Mixed Use Projects (Sec. 14 – LAMC Section 12.24.W.28 (b)) and Site Development Plans (Sec. 34 – LAMC Section 16.05.F (3)).

4. The Adjustment Core Finding:

- **ORDINANCE:** That the granting of the adjustment recognizes that while site characteristics or existing improvements make strict adherence to the [zoning regulations, specific plan regulations, or hillside regulations in Section 12.21 A.17 (e) or (h)] impractical or infeasible, the project conforms to the intent of those regulations.
- **PPCC REVISION:** PPCC REQUESTS THAT CORE FINDING #4 BE DELETED.
- **REASONS FOR DELETION OF CORE FINDING #4:**
 - (a) Relative to the hillside provisions of the Code, and as set forth in Section 2 above, PPCC objects to the Ordinance modifying hillside sections of the Code without consideration of the BHO. Accordingly, Sec. 24 – LAMC Sec.12.24X.21 (b)(4) should remain as currently written.
 - (b) Relative to general plan and specific plan adjustments, PPCC’s policy is to oppose all such requests: “When variances, variations or exceptions are considered by governmental entities, PPCC’s position is to support strict scrutiny and adherence to all legal measures which govern land use, structures and vegetation.” (PPCC General Policy Motion adopted 1/12/2006). PPCC seeks to discourage any efforts to deviate from required regulations and believes that Core Finding #4 will encourage applicants to seek adjustments in lieu of more difficult-to-obtain specific plan exceptions and/or variances.

5. The Project Design Core Finding:

- **ORDINANCE:** That the project provides for an arrangement of uses, buildings, structures, open spaces and other private and public improvements that are compatible with the surrounding neighborhood.

PPCC MOTION – Proposed Zoning Code Simplification Ordinance; CPC-2010-1572-CA

- **PPCC REVISION:** That the project provides for an arrangement of uses, buildings, structures, open spaces and other private and public improvements that are compatible with the **scale and character of the adjacent** and surrounding neighborhood.

- **REASONS FOR MODIFICATIONS AND SUGGESTED CHANGES:**
 - (a) Planning has represented the intent of the Core Finding to be an “urban design concept” for major projects. The phrase “scale and character” is consistent with Planning’s objectives, reflective of current Code findings, and provides clearer guidance to the decision-maker in applying the Core Finding to specific uses.

 - (b) Since current Code provisions require findings regarding bulk, setbacks, off-street parking, loading areas, lighting, landscaping, trash collection and other specific concerns, PPCC recommends that Sec. 17 – LAMC Sec. 12.24.50 (Storage Buildings for Household Goods including Truck Rentals) and Sec. 32 – LAMC Sec. 14.3.1.E (4)) (Eldercare Facilities) remain as written.

 - (c) Relative to the hillside provisions of the Code, and as set forth in Sections 2 and 4 above, PPCC objects to the Ordinance modifying hillside sections of the Code without consideration of the BHO. Accordingly, Sec. 22– LAMC Section 12.24X.11 (a)(2) & (c)(2) must remain as currently written.

6. The Traffic Core Finding:

- **ORDINANCE:** That the project will not create an adverse impact on street access or circulation in the surrounding neighborhood.

- **PPCC REVISION:** PPCC REQUESTS THAT CORE FINDING #6 BE DELETED.

- **REASONS FOR DELETION OF CORE FINDING #6:**
 - (a) This Core Finding is only applicable to two uses (other than hillside areas): mini-malls/commercial corner projects and automotive uses. PPCC objects to a generalized Traffic Core Finding which is not use-specific – particularly because the Ordinance does not specifically address ingress and egress or those instances in which warranting adjustments to circulation patterns may be of benefit and not necessarily adverse to all impacted by the proposed development. The Core Finding weakens the Code because it arguably deletes required findings for ingress and egress, the absence of parking hazards or congestion for automotive uses (Sec. 12 – LAMC Sec. 12.24 W.4 (b)(3)) and mini-malls (Sec. 13 – Sec. 12.24. W. 27 (b)(2)).

 - (b) Relative to the hillside provisions of the Code, and as set forth in Sections 2, 4 and 5 above, PPCC objects to the Ordinance modifying hillside sections of the Code without consideration of the BHO. Accordingly, Sec. 24 – LAMC Sec. 12.24.X.21 (b)(1) should remain as written.

7. The Housing Element Core Finding:

- **ORDINANCE:** That the project implements the affordable housing provisions of the Housing Element of the General Plan.

- **PPCC REVISION:** None.