

Attachment "I"

Background Information **Recommended Motion to Request Postponement of** **CF 12-0460-S4/Processes & Procedures Amendment**

The Westside Alliance of Councils should urge the City Council to postpone the consideration of the pending proposed Processes & Procedures Ordinance. The Ordinance makes significant changes that have the potential to reduce public engagement and thwart transparency on land use matters and housing equity. The Ordinance is just one chapter of the proposed New Zoning Code (NZC), and yet this chapter is being pushed toward adoption in advance of the rest of the Code in an attempt to radically streamline the approval process. There should be no further streamlining of project approvals when the City has failed to address planning fundamentals that are necessary to ensure the health, safety and welfare of the people of Los Angeles.

The Key Concerns are:

1. The Ordinance moves Planning authority away from elected officials, accountable to the public, to unelected City Administrative personnel or City Commission.

Unelected officials will have authority to make decisions regarding project “adjustments”, “alternative compliance”, CUPs and HPOZs. This shift would reduce public engagement, and allow important decisions to be made with no public oversight.

The Ordinance is nearing final approval, though LA City Planning (Planning) has failed to follow explicit instructions from the City Council. The Council unanimously approved a motion from Council President Nury Martinez instructing Planning to update the Ordinance with additional criteria for granting entitlements, and language ensuring the furtherance of the public’s interests (CF 20-1045) as well as cited public concern over the approval process for some projects. Martinez stated, “For this reason, it is necessary to provide additional criteria in the Processes and Procedures Ordinance when legislative actions and other entitlements occur. This will give more discretion to the Planning Department to make sure these actions align with broader city goals and the public interest. This will also provide more transparency to the public when a project can diverge from existing zoning.”

2. Ordinance codifies existing policies that promote housing inequality, and should not be adopted before the completion of the Housing Element.

For increased validity, allow the City to continue its current process of updating the Housing Element before adoption of the Ordinance. The language under Sec. 11.5.11.a continues the practice of counting replacement-units toward the affordability requirement which does not contribute to resolving the affordable housing crisis.

In addition, Sec. 11.5.11.a allows developers the option of building offsite affordable units to fulfill affordability requirements, which perpetuates segregation and promotes housing inequality. On 5/21/21, LACP and HCIDLA submitted “Report Relative to the Citywide Equitable Distribution of Affordable Housing” (CF 19-0416) to City Council. The report makes clear that affordable housing in LA is mostly concentrated in the City’s central areas, and that many communities in high resource areas have little or no affordable housing available to low-income households. Allowing developers to build affordable units off-site perpetuates this situation.

Nothing in the Ordinance should preclude policy changes that may be included in the updated Housing Element to reverse growing housing inequality.

3. There has been limited public outreach, and no meaningful effort to present the Ordinance to Neighborhood Councils (NCs) for scrutiny.

City Planning has conducted almost no outreach to NCs and the general public. The Ordinance makes significant changes to the approval process. has held 3 meetings of 1.5 hours each to review a 900+ page document, not including Exhibits. Further, despite repeated requests, LACP has refused to provide a redline document that shows what changes were made after the last round of

feedback. The Recommendation Report from the City Planning Commission, a document that runs over 1,000 pages, was released about two months ago. This is not enough time for Neighborhood Councils and Council Office planning deputies to review and comment. Technical corrections were posted on May 25, 2021 and the Ordinance appeared on the PLUM agenda just 7 days later, but these “technical corrections” appear to contain substantive changes. The reduction in notifications for appeals from property owners within a 300-foot radius to only abutting property owners is significant. Also, the tables in the technical corrections claiming that something is or is not required by the City Charter (in red) appear to be an effort to recast the requirements of the Charter which cannot be changed by ordinance or by the LACP.

4. The Ordinance must explicitly reference Neighborhood Councils (NCs), the role they play in public engagement for land use issues, and codify notification to NCs of new planning applications.

The Ordinance seems to remove Neighborhood Councils from the planning process. It only requires that NCs be notified of public hearings, of which there will be far fewer under the New Zoning Code, since it allows substantial By-Right increases in height and density. Also, it does not mention the Early Notification System (ENS), which allows NCs to get regular updates on submitted applications by neighborhood. The ENS must be codified within the language of the Ordinance.

While NCs have no decision-making authority, they provide a crucial forum for public engagement, giving stakeholders the opportunity to review and comment on proposed projects. The NCs and DONE are the only entities required by the Charter for land use that are not expressly included as a Section in Division 13A.1. Their exclusion seems to be part of a larger strategy to remove Neighborhood Councils from their role as agents of public engagement with regard to land use decisions.

5. Time factor, since the Ordinance’s first publication with recommendations and later a second draft of the ordinance, and additional technical changes made a week before the June 1, 2021 PLUM meeting where this was considered and voted upon, has created a time burden for timely review by Council Offices, Neighborhood Councils and the general public.

Additional time needs to be allowed for City Council and staff to review the documents in their entirety, and it is strongly encouraged that the Council obtain outside cumis counsel to review the document rather than relying on the City Attorney’s office, to ensure that no transfer or elimination of land use authority occurs which would diminish the explicit authority of the Los Angeles City Council to preside over land use issues in the City.

5. City Planning lags behind by decades on state required Elements of the General Plan which should be completed BEFORE consideration of this council file.

City Planning needs to complete its fundamental work of updating a number of General Plan Elements that include: Air Quality (1992); Conservation (2001); Safety (1996); Infrastructure (1968-1972); Open Space (1973); Public Facilities & Services (1969) and Noise (1999). In addition, the City has failed to comply with the General Plan’s monitoring requirements.

Further, the City’s focus on speculative growth and development is causing increased housing inequality, depleting precious resources and causing a strain on public services and infrastructure. Yet, in spite of these grave problems, the City’s leadership is pushing forward with an Ordinance designed to accelerate project approvals. This piecemeal approach to the adoption of the New Zoning Code, along with its out-of-date Elements of the General Plan, has created a chaotic process that puts at risk the health, safety and welfare of the residents of the City of Los Angeles.

Lastly, District Council Offices, Neighborhood Councils and the general public must be given more time to study and comment on such a complex document. Thus, it is essential for the Council to postpone consideration of the proposed Processes & Procedures Ordinance until the approval of the

Housing Element and the Report of Citywide Equitable Distribution of Affordable Housing (CF 19-0416).

Specific Examples of Concern: New section 13.1.1. opens by stating that "This Division recognizes or formally establishes the agencies involved in administering the Los Angeles Zoning Code. The Division also describes how the agencies are composed, and their powers and duties."

This language suggests that the agencies are being given powers independently of Council and its power. Since this will be enacted by ordinance, the provisions and powers granted may be read to OVERRIDE contrary provisions in the Charter and serve to delegate away legislative power without formally amending the Charter. That is made apparent by the fact that although the Charter provision on City Council's general authority is changed, the Charter provision on general authority for the Mayor's office is not.

Subsection C makes clear that it cuts back on the City Council's ultimate legislative authority under City Charter Section 240:

C. General Authority

The City Council generally exercises all legislative authority associated with the Zoning Code, except where otherwise provided by the Charter, State law, or the Zoning Code. The City Council's legislative authority is subject to veto or approval by the Mayor. See City Charter, Sec. 240.

The "except where otherwise provided" language is new and makes the City Council's legislative authority for Planning and Zoning EXPRESSLY subject to other provisions of the Zoning Code and of State law AND subject to veto or approval by the Mayor WITHOUT specifying or referring to the provisions regarding overrides of mayoral veto so carefully referenced elsewhere. Recall that under the charter provisions above, Council expressly retains all legislative authority except as otherwise set forth in the Charter or by ordinance.

The language in C is pernicious in at least 3 respects:

First, the "subject to State law" paves the way for a statewide Planning and Zoning Commission that is implemented top down by State law directly to Planning bureaucrats in the City, bypassing Council and the Mayor.

Second, the "subject to the Zoning Code" takes away all legislative authority from the City to the extent given to others in the Zoning Code itself.

Third, the veto language is missing the crucial phrase included everywhere that a veto is mentioned in the Charter itself -- the phrase "subject to the power of veto or approval by the Mayor as set forth in the Charter". Thus, without the override provisions, this could be read to strip Council of ALL legislative authority except as otherwise approved by the Mayor. Talk about a power grab. There is no such mayoral power in the current charter. Under the current charter, Council is the ultimate decision maker of its own legislative power and can override the Mayor. This proposed language could be read at least insofar as the Zoning Code is concerned (and perhaps more broadly) to mean that there is no legislative authority except to the extent of mayoral approval and that has to be wrong.

To add insult to injury, Section D adds a finite list of "Specific" Authority that City Council retains which is only the broadest of approval rights in Planning and Zoning. There is no "Specific" authority listing in the existing charter for the simple reason that the Council ultimately exercises ALL legislative and municipal power and so there is no reason to delineate specifics.

Section 13.1.2 gives the Mayor several specific powers that he does not have in the current Charter including the exercise of any authority delegated by any section of the Municipal Code or State Law and note that here, unlike in the limitation on legislative authority, the reference to the Mayoral veto of Specific Plans, Zoning Code Amendments and Zone Changes does specifically state that the veto power of the mayor in this regard is "pursuant to the City Charter" thereby preserving the override

provisions here and raising the implication that the omission of the charter reference in the preceding section regarding mayoral veto on legislative authority was deliberate and indeed intended to upend the charter division of power.

Section 13.1.3 gives the CPC final decision making authority over (among other things) Class 3 Conditional Use Permits, Preservation Plan Adoptions/ Amendments; and Policy Plans as well as over all decisions given to Area Planning Commissions. Currently, CPC has final authority over NOTHING since all of their activities are subject to Council's ultimate legislative power.

And it also makes the CPC the ultimate decision maker "to approve or deny, on appeal, any:

- a. Project Review relating to a Density Bonus;
- b. Specific Plan Interpretation (which affects an entire Specific Plan area or any of its subareas);
- c. Appeals of Department of City Planning action on LADBS appeal that are found may have a citywide impact;
- d. Zoning Code Interpretation; and
- e. Subdivision approval, as provided in Division 13.10."

So the CPC gets to decide all Zoning Code interpretations (eg do the TOC Guidelines apply in an HPOZ? do they override Q conditions etc). And we already know what Planning and Zoning have said on those fronts.

And Area Planning Commissions also get vastly expanded powers in Section 13.1.4:

3. To render a final decision on any:
 - a. Project Exception; and
 - b. Certificate of Appropriateness (demolition, removal, relocation).
3. To approve or deny, on appeal, any:
 - a. Class 2 Conditional Use Permit;
 - b. Project Review;
 - c. Project Permit;
 - d. Project Compliance (with Design Review);
 - e. Project Adjustment;
 - f. Specific Plan Interpretation (which is applicable only on a site specific basis);
 - g. Alternative Compliance;
 - h. Adjustment;
 - i. Variance;
 - j. Appeals of Department of City Planning action on LADBS appeal;
 - k. Zoning Code Interpretation on a site specific issue;
 - l. Subdivision approval, as provided in Div. 13.10;
 - m. Certificate of Appropriateness (construction, addition, alteration, reconstruction);
 - n. Certificate of Compatibility for non-contributing elements; and
 - o. Coastal Development Permit.
4. To render decisions or consider appeals relating to Coastal Development Permits, where provided by Chapter 1 and Chapter 1A.

NOTE: it does NOT say "to hear in the first instance subject to any right of appeal to the full CPC and Council", it says "to render a final decision" and "to approve or deny, on appeal", in each case suggesting no further right of appeal. And note that this includes Coastal Development Permits (recent articles about the Billionaire and the Beach show where this can go), Variances and Certificates of Appropriateness and Compatibility in HPOZ.

Further, the Director of Planning has ZERO ultimate authority in the existing charter and Code. Just look at the long list of goodies in Section 1.3.5 that we would have Vince Bertoni as the ultimate decision maker on:

Specific Authority

The Director of Planning exercises the following specific authority:

1. Review and submit recommendations on:
 - a. The adoption or amendment of the General Plan;

- b. The adoption or amendment of a Specific Plan;
 - c. The adoption or amendment of the Zoning Code;
 - d. A Zone Change (including Supplemental Use Districts);
 - e. The adoption or amendment of a Preservation Plan; and
 - f. Any other decision within the original jurisdiction of the City Planning Commission or an Area Planning Commission.
2. To render a decision on any:
- a. Project Review;
 - b. Director Determination;
 - c. Administrative Review;
 - d. Project Compliance;
 - e. Project Compliance (with Design Review);
 - f. Project Adjustment;
 - g. Specific Plan Interpretation;
 - h. Alternative Compliance;
 - i. Adjustment;
 - j. Reasonable Accommodation - Fair Housing Protections for Individuals with Disabilities;
 - k. Review of Conforming Work in an Historic Preservation Overlay Zone, where delegated by a Preservation Plan;
 - l. Certificate of Appropriateness (construction, addition, alteration, reconstruction) in an Historic Preservation Overlay Zone;
 - m. Certificate of Compatibility for non-contributing elements in an Historic Preservation Overlay Zone;
 - n. Appeals from LADBS Determinations; and
 - o. Coastal Development Permit.
3. Interpret the meaning of the General Plan and specific plans in instances when there is a lack of clarity in the meaning of those regulations, subject to appellate review.
4. Appoint a designee to act on his or her behalf, in which case, references in this Code and other land use ordinances to Director shall include this designee, unless otherwise stated.

Particularly note the transfer by ordinance of "any other decision within the original jurisdiction of the City Planning Commission or an Area Planning Commission" which basically turns the departmental hierarchy on its head.

In the interests of at least a modicum of brevity I will skip over the newly expanded roles of ZAs and LADBS to Section 13.1.9 which is entitled "Advisory Agency" but which really is just more power to the Director of Planning in a new role created out of whole cloth -- an "Advisory Agency" that among other things gets to decide and render decisions on all kinds of things that today require an ordinance such as:

- 1. Parcel Map Exemption/Lot Line Adjustment;
- 2. Tentative Tract Map;
- 3. Final Tract Map;
- 4. Preliminary Parcel Map;
- 5. Final Parcel Map; and
- 6. Private Street Map.

And so a review of the operative provisions reveals that ultimately the Director of Planning will exercise all powers of the Director's Office plus the Advisory Agency plus "any other decision within the original jurisdiction of" the CPC or any Area Planning Commission. In short, there is the Director, the Zoning Administrators and Council.

REGARDING NC's AUTHORITY:

Charter section 907 reads in its entirety:

"The Regulations shall establish procedures for receiving input from neighborhood councils prior to decisions by the City Council, City Council Committees and boards and commissions. The procedures shall include, but need not be limited to, notice to neighborhood councils as soon as practical, and a reasonable opportunity to provide input before decisions are made. Notices to be provided include matters to be considered by the City Council, City Council Committees, and City boards or commissions."

Section 907 of course does not specifically refer to the Mayor or the Director of Planning because as the Charter makes clear, neither the Mayor nor the Director had any authority over planning or land use, all of which legislative authority was reserved to Council under Charter sections 240-254. In assigning a host of decisions to the authority of the Mayor under sections 13.1.2(D) (none of which the Mayor currently has except to the extent submitted for signature by Council and always subject to Council's ability to override) and to the Director under Section 13.1.6(D) (none of which the Director currently has without the right to appeal to Council or one of its committees, boards or commissions), the proposed ordinance raises the specter that someone, the Planning Department, the Mayor or someone else, will take the position that no advance notice to or input from the Neighborhood Councils is required under Charter section 907 for the long list of decisions so delegated to the Mayor or the Director under the proposed new ordinance. Of course that is wrong and illegal. Even if Council were to delegate legislative authority under an ordinance, all of these planning decisions now placed under the "specific authority" of the Mayor or the Director are still decisions by Council exercised by delegated legislative authority and cannot be used to end run the explicit Charter processes and procedures guaranteed to neighborhood councils. A slew of lawsuits would surely ensue.

That also means that delegated authority from Council has to comply with the Brown Act and Charter requirements that apply to Council including Charter Section 242; you can't just take the decisions off into private sessions by delegating authority to the Director without a Charter amendment. And you cannot simply wipe away the right to the due process built into the Charter -- notice, a public hearing and a right to appeal.

Under current law no director determination is a final decision for the City because of course the Director is appointed and not elected and one of key points of our Charter was to be sure that the responsibility to make final decisions and determination for the City as a whole rested with publicly elected officials accountable to the voters. That Charter principle is reflected throughout the Municipal Code, see, for example, LAMC sections 11.5.3, 11.5.7.C(4)(b), 11.5.7.C(1), 11.5.7.C(6), 11.5.7.D(3), 11.5.7.E, etc. This ordinance is a substantive ordinance to the extent it gets rid of the right of aggrieved parties to appeal the decisions of the director.

DCP said it was not their intent to change anything substantive, so at Arthi Varma's (Deputy Director of Planning) request, below are a few suggestions that were submitted to her to fix the charter amendment problems above.

Suggested modifications to the Ordinance:

Delete section 13.1 in its entirety (which is the operative delegation of Council's power) and replace it with something along the following lines:

"This Division recognizes and organizes in one place the agencies involved in administering the Los Angeles Zoning Code and the manner in which an applicant or stakeholder may appeal from any determination by those agencies. The Division also describes how the agencies are composed, and their powers and duties, but is not intended to and does not add to or detract from, increase or diminish, those powers or duties and is not intended to and does not limit or detract from any existing rights (including rights to notice and appeal) of the certified Neighborhood Councils or any of the legislative authority or powers of the City Council). Specifically without limiting the generality of the foregoing, the certified Neighborhood Councils will continue to receive the advance notice, the early warning system and the mailed notices set forth in existing law, including Charter section 907

and the Los Angeles Municipal Code section 12.22.A.25(g)(2)(i)(d), all of which are expressly preserved by this reference for all determinations and decisions made under the original or delegated authority under this Division, including any decisions by the Director or the Mayor exercising delegated authority from Council. If the agency is established under the city charter or other ordinance, cross-references to those laws are provided.”

DCP said “NO”. Bonnie Kim has continued to assert that they did not change anything. What they have written is certainly a change that can be interpreted to exclude NCs and their ability to hold hearings (meetings) and weigh in on land use decisions before they are made.

For the reasons above, the Processes and Procedures Ordinance should NOT proceed to the City Council until and unless there is more public engagement, the City Council gets independent counsel to review the document, and specific NC authority is made clear.

Stacy Shure

Until 6/30/21:

Member/Mar Vista CC rep, WRAC Land Use & Planning Cmtee

Mar Vista CC alternate rep, WRAC board

Member, Mar Vista CC & Chair, Mar Vista CC PLUM Cmtee