

palisades preservation association

July 11, 2011

Planning and Land Use Management Committee,
Los Angeles City Council,
Room 395,
200 N. Spring Street,
Los Angeles, CA 90012

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Submitted in PLUM Committee
Council File No: 11-1140
Item No.: 1
Deputy: public

File No. **11-1140**
Case No.: CPC 2010-1495-CA
CEQA No.: ENV-2010-1496-ND
Multiple Approvals Procedural Revisions
Hearing: **July 12, 2011**

Honorable Committee Members,

Our Board has voted to oppose the proposed Multiple Approvals Procedures Revisions for the reasons stated herein. In particular the Board opposes the granting of extensions of time for discretionary approvals as proposed in the ordinance as only encouraging applicants to delay completion of their projects, with the exception of subdivision maps which are regulated by the State. These extensions will not only change City policy, but have the potential to adversely effect the City and delay economic recovery.

The Board also urges that if the extensions of time are included in the ordinance other than those mandated by State law, that an EIR be prepared to analyze the potential environmental impacts that will result if extensions are granted where there have been changes in the conditions on or around the project site. which would not result if the project permits expired as provided in the current Municipal Code.

Further, because the project description in the was in error, it is urged that the proposed ordinance be renoticed again for environmental review and a new environmental review commenced.

The Boad is not opposed to revisions in the Multiple Approvals provisions, particularly those set forth in Section 13 of the proposed Ordinance except for sub-section 12.36.I Expiration.

Time Extensions in the Proposed Ordinance.

There are several revisions regarding time extensions but there are two revisions which will have the most impact. The first are in the first three Sections of the Ordinance. These three Sections delete provisions in the Code which provide that if (1) a Project Permit Compliance. (2) a Specific Plan Exception, or (3) any Certificate of Appropriateness, Certificate of Compatibility,

or Conforming Work that has been approved, automatically expire within two years or 24 months unless an extension is granted.

Instead, LAMC Sub-section 12.25.D has been amended to provide that instead of two years, the period is now three years. However, that sub-section also provides for exceptions which extend the periods of approval. For example any approval already granted after July 15, 2008 and before January 1, 2012 is automatically extended 36 months or three years. All other approvals which have been granted such as for 1) conditional use permits, 2) variances, 3) coastal development permits, 4) adjustments and slight modifications, 5) specific plan Project permit compliance reviews, adjustments and exceptions, 6) and other discretionary land-use entitlements is determined by the Planning Director are automatically granted a one year extension. Moreover, any approval of a quasi-judicial project by the City Council is automatically granted six years for completion (Sub-section 12.36.H. 1.)

Sec. 15 of the proposed ordinance also deletes another time limit for the Alternative Compliance Procedures for Public Benefit Projects which include some of the following:

- a. Mobile home parks where any trailer or mobile home is permitted to remain longer than one day, and which were lawfully in existence on December 6, 1986.
- b. Recreational vehicle parks and mobile home parks in the A, R or C Zones where any trailer, mobile home or recreational vehicle is permitted to remain longer than one day and which were lawfully created after the effective date of the ordinance adding this use to the Code.
- c. Shelters for the homeless (as defined in Section 12.03) containing not more than 30 beds are permitted by right in the R3, M1, M2 and M3 Zones with reduced parking requirements.
- d. The installation and maintenance of trailers for use as temporary accommodations for homeless persons.

The Alternative Procedures apply when a proposed public benefit project does not comply with the performance standards delineated in the Sub-section. If so, the applicant may apply for approval of alternative compliance measures and the applicant must complete or have undertaken construction within two years of the effective day of the approval. Now that will be extended to three years or longer.

Sections 19 and 20 of the proposed ordinance delete the required completion dates for all subdivision maps (tentative and parcel maps) and bring them into compliance with Sec. 5 of the proposed ordinance which is the revised Section 12.25. That is the section that provides for at least three years from the date of approval and which grants several extensive extensions to existing approved permits. However, Section 12.25 does not mention subdivision maps. Apparently subdivision maps are supposed to be included as part of a vague Sub-section 12.25. D . (1) "other discretionary land use entitlements as determined by the Director."

What appears to be happening is that the proposed ordinance is lumping subdivision

maps, which were previously in separate sections, into a group containing all other discretionary approvals, such as coastal development permits, CUPs, variances, adjustments, and specific plan approvals and setting the same expiration dates for all discretionary approvals.

A tentative or tentative parcel map normally must be made a Final Map in two years. However, the Legislature has unwisely mandated extensions up to six years since 1993 with the last extension approved in 2010. Therefore, the City must revise its subdivision regulations to conform with state law.

That, however, does not mandate that the City also extend the expiration dates for other discretionary approvals. Government Code Section 65951, which mandates the extensions, only applies to subdivision maps. It does not apply to other types of discretionary approvals. Thus, any revisions to extensions of expiration dates should be applied to subdivision maps and not to any other types of discretionary approvals.

Adverse Impacts on Public Policy by the Proposed Time Extensions.

Public policy calls for expediting projects, not delaying them. Putting time pressure on applicants gets housing built, commercial and other projects that generate revenue and jobs built. To streamline the approval process as is done in the proposed ordinance and then extend the expiration dates is counter productive. It is a "hurry up and wait" approach. Why streamline the process and then open the door to further delay.

Time limits for completion of permits, etc. are imposed for several reasons. One reason is because if an applicant does not act promptly on a permit or other entitlement, the environment surrounding the project may change. Other projects not considered at the time the permit was granted may have altered the conditions in the area. Traffic congestion may have increased to a degree that was not contemplated when the project was approved. Neighborhood conditions may have changed.

For example, coastal development permits are often granted in the Pacific Palisades for single family residences and apartment buildings which are located on active landslides. Experience has shown that before some of these projects are constructed, the landslide areas expand so that the conditions of approval for the coastal development permit are no longer suitable. Extending the time of the permit raises the possibility that a structure will be built where it should not be built.

Another example is that an Adult Entertainment business obtains a CUP to operate in a C2 zone. The CUP also allows the on-site sale of alcohol. However, the applicant fails to utilize the permit after 23 months. In the meantime the School District has purchased an adjacent property and has constructed an elementary school on the property. Now the owner of the Adult business wants an extension to open the business. Under current regulations, that extension can be denied. However, under the proposed ordinance, the owner would still have the right to open the business without obtaining an extension.

Or the property was rezoned from C2 to R1 during the 24 month time period so that all the surrounding properties are now single family residential. Under current regulations, the CUP would expire but under the proposed ordinance, it still is valid.

Therefore, the usual procedure is for the applicant to request an extension if the project has not commenced or has not been completed. This gives the Planning Dept. an opportunity to review the project to ensure that conditions have not changed so that the impacts of the project, if completed later, will not have adverse impacts if the time period is extended.

Another reason for tight time limits is to ensure that an applicant starts a project but stops work on it leaving an eyesore. What sometime happens is that an applicant will not have adequate funding to complete a project but will commence it anyway in order to “vest” the project. Developers should ensure that their financing is in place before seeking approvals rather than wait until after they get approvals to seek financing.

The reasoning behind extending time limits is either because (1) that in the tight lending market, the applicant cannot get financing to complete the already approved project; or (2) the applicant obtained the approvals before the crash in the housing market so that the applicant cannot market the project and thus when the market recovers, the applicant would have to go through the process again.

This reasoning however, is contrary to the policy of placing time limits on timely completing projects which is to ensure that conditions do not change so that the project when completed, does not result in an adverse impact on the surrounding areas, and secondly, get the project completed so that the City benefits from the increased property taxes.

Moreover, many developers obtain the necessary approvals and then, rather than develop the project themselves, attempt to market the project. They are speculators and should not be permitted to get around the purposes of time limits. But then any applicant seeking approvals before obtaining financing is a speculator and speculation should not be rewarded.

One of the purposes of time limits on approvals is to get the property developed. If the applicant is not able to develop it in time, expiration of the approval opens the door for another applicant to make an effort to develop the property. For developers waiting for the market to recover, that was a gamble. For subdividers, all they have to do is vest the map. Extending time limits only defeats public policy.

Sec. 9. Time Limitations.

Section 9 of the proposed ordinance amends the time limitations on discretionary approvals in general, in particular amending LAMC Sec. 12.25. Most of the amendments to that section are non-controversial. The controversial amendments fo the Section are in subsection D.1 regarding Expirations of permits. The proposed revision automatically extends the time limits for 1) conditional use permits, 2) variances, 3) coastal development permits, 4)

adjustments and slight modifications, 5) specific plan Project permit compliance reviews, adjustments and exceptions, 6) and other discretionary land-use entitlements is determined by the Planning Director.

As discussed above, this is an unwise policy. Moreover, as to coastal permits, subsection 12.25.D.1 not only is internally inconsistent, it violates the Coastal Act, specifically, the Coastal Commission Regulations that provide that a Coastal permit is valid only for two years and that only a one year extension can be granted if the applicant satisfies certain criteria.¹ The sub-section is also internally inconsistent in that it conflicts with Sec. 12.20.2. Coastal Development Permits, (Prior to Certification of the Local Coastal Program.) specifically with sub-section N. Extensions of Permits. That sub-section sets forth extensive procedures for obtaining an extension of a Coastal Permit. Because the Pacific Palisades does not have a Local Coastal Plan, §§12.20.2 applies to all applications for Coastal Permits in that community.

Other Problems With The Proposed Ordinance.

Sec. 16. Design Review Board Procedures.

Sub-section 16.50.E.4 now reads as follows:

“ 4. Duration of Design Review Board Preliminary Review and the Director’s Decision or the Area Planning Commission’s Decision on Appeal. A design review board’s advice on an optional preliminary application shall be valid for 24 months. A final decision of the Director or Area Planning Commission on appeal shall be valid for a period of two years, so long as all necessary building permits are obtained within that two years. In the event a building permit is obtained in a timely manner but subsequently expires, the Director’s decision or Area Planning Commission’s decision on appeal shall expire with the building permit.”

The proposed revision reads as follows:

“4. Duration of Design Review Board Preliminary Review.

“A design review’s advice on an optional preliminary application shall be valid for 24 months.”

Impact. The revision substantially weakens the original limitations.

Sec. 4 Affordable Housing Incentives - Density Bonus.

Section 4 is ambiguous. On one hand it provides that for applications for Housing Development Projects that qualify for a Density Bonus which require approval of the Director

¹ 14 CCR § 13156; 14 CCR § 13169

of Planning, that the Deputy Advisory Agency can assume that authority if the application involves a subdivision. Yet the next sub-section requires that the Planning Director approve the Density Bonus and any incentives so nothing is achieved by the amendment. LAMC 12.22.A.25.(g).(2).(I) is amended to read as follows:

.....

(2) Requests for Incentives on the Menu.

(i) The applicant for Housing Development Projects that qualify for a Density Bonus and that request up to three Incentives on the Menu of Incentives in Paragraph (f) of this subdivision, and which require no other discretionary actions, the following procedures shall apply:

a. **Application.** The request shall be made on a form provided by the Department of City Planning, as set forth in Section 11.5.7 B 2(a) of this Code, accompanied by applicable fees.”

b. **Director’s Authority.** The Director shall have the initial decision-making authority to determine whether an application for Density Bonus is consistent with this subdivision and the Affordable Housing Incentives Guidelines.

EXCEPTION: Notwithstanding the above, when the application is filed as part of a project requiring multiple approvals the authority set forth in Section 12.36 of this Code shall govern. When the application is filed in conjunction with a subdivision and no other approval, the Advisory Agency shall have the initial decision-making authority.

c. **Action.** The Director shall approve a Density Bonus and requested Incentive(s) unless the Director finds that:

Comment: While the revision brings the applications for a Density Bonus under the revised procedures set forth in Section 12.36, it has two problems. First, Section 12.36 includes time extensions of up to six years if the application eventually is approved by the City Council.

Secondly while the Advisory Agency shall have the initial decision-making authority if the project involves a subdivision. it appears that the Director of Planning must still approve any Density Bonus. So it makes no sense to make the Advisory Agency the initial decision-making authority.

Further, it conflicts with the proposed revisions to Sec. 12.36 in that there is no provision that the Director is an initial-decision making authority and therefore, there is no appeal from the decision of the Director as provided in that Section.

Sec. 22 There is No Urgency to Enact the Proposed Ordinance.

The Urgency Clause is as follows:

“Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reason: In order for the City of Los Angeles to preserve development applications that may expire or cannot be presently processed due to current adverse economic conditions impacting the City’s budget and to streamline and create predictability in the development review process for the benefit of economic development during distressed times, *it is necessary to immediately* create consistent procedures for review of projects requiring multiple approvals, synchronize the expiration periods of multiple approvals granted to a single project, clarify language regarding utilization of approvals, eliminate the redundancy of extensions of time for quasi-judicial land use approvals, extend the life of previously-granted approvals following the dates specified in the state legislation SB-1185 (CA Gov’t Code Sections 66442.6, 66452.14, 66425.15, 66452.21, and 66463.5) and AB-333 (CA Gov’t Code Sections 65961 and 66452.22), and make minor technical corrections.” (Emphasis added.)

The purpose of an urgency clause is eliminate the 30 day waiting period for an ordinance to take effect after the Mayor’s signature and publication of the ordinance. If it was so urgent to pass this ordinance, then why the delay of over two years since the Government Code sections regarding subdivision map time limits were amended.

Moreover, there is no evidence supporting the finding. How is saving a month on extension of the time limits going to result in “the immediate protection of the public peace, health, and safety” of the City. All it does is allow developers more time to delay doing their projects which in fact, means that the City will lose revenue from increased property taxes and fees for processing applications for extensions. Passage of the ordinance will benefit developers but at a cost to the City.

Project Description Erroneous.

By referring to SB 1185 and AB 333 in the Ordinance heading, the heading is vague. As was pointed out to the Planning Department at its hearing on March 23, 2011, there is a new SB 1185 and a new AB 333 every year. So which SB 1185 and AB 333 are being referred to?

It such references that made the Staff Report for March 23, 2011 so confusing to the public. The SB 1185 referred to is a bill passed in 2008 and AB 333 is a bill passed in 2009, both of which amended Government Code Sections that set time limits on subdivision maps by extending the expiration dates. However, neither bill mandated that time limits on CUPs, variances, slight adjustments, coastal permits, etc. be extended.

Therefore, to state in the Heading that the ordinance is to “...extend the life of previously-granted approvals following the dates specified in the state legislation SB 1185 and AB 333...” is inaccurate and misleading. It should read:

“...extend the life of previously-granted approvals of *subdivision maps* following the dates specified in *Government Code Sections 65961, 66452.14, 66425.15, 66452.21, 66452.22 and 66463.5...*

The heading is also the Project Description. Therefore, because the current heading does not accurately describe the project, the Negative Declaration is void.

Necessity for an EIR to be prepared for the Ordinance.

The issuance of a Negative Declaration for the proposed ordinance is inappropriate. Zoning ordinances are subject to CEQA and when a zoning ordinance has the potential to result in a physical change in the environment, it is a project under CEQA.² The proposed ordinance is a project because it allows the extensions of time to complete projects that otherwise would not be built but for the automatic extensions of time.

When a zoning ordinance is prospective in nature in that it only features future development in which future projects subject to the ordinance will be reviewed for each project's potential environmental impacts, a negative declaration is appropriate. However, the proposed ordinance **retroactively** includes many projects which have already had environmental review. If conditions have changed for any of those projects, then the previous environmental review is no longer valid.

The impacts on the physical environment are exacerbated when extensions are granted when conditions at or near a project site that has previously received environmental clearance have changed so that the project may, if an extension is granted, have significant adverse impacts on the environment. By automatically extending the life of any already approved project without any review of the project to determine whether or not there are changed conditions that might result in significant adverse impacts on the environment if the project were to proceed, the proposed ordinance will be counter to the purposes of CEQA.

Because the ordinance may have such adverse impacts, a Negative Declaration is not justified, notwithstanding the fact that no development is proposed as part of the project and no change in land use, density, or intensity is proposed as part of this project. The problem is that while the ordinance does not apply to future projects, it does apply to already existing projects. Therefore, an EIR is required to analyze and quantify the potential impacts on the environment that could result if the ordinance is enacted.

Conclusion.

Consolidating multiple approvals into a single process makes sense. However, in doing so, the Planning Staff has lumped into the ordinance extensions of time limits which has no relevance to the consolidation of multiple approvals. It is like attaching a rider to a defense appropriations bill that gives peanut farmers an additional year to file claims for subsidies,

² Pub. Resources Code §21080(a), Cal. Code Regs. §15360

because granting extensions to developers is the same as the City giving them subsidies.

There is no question that the City needs to amend its subdivision regulations to comply with the State mandated expiration dates. But that should be done in a separate ordinance and any such extensions should not apply to discretionary permits that are not related to subdivision maps.

Therefore, the City Council is urged to send the proposed ordinance back to Staff to (1) separate out the extensions of time from the Multiple Approvals Revisions; and (2) prepare a separate ordinance extending the expiration times for subdivision maps as mandated by State law.

If the City Council chooses to grant automatic time extensions for discretionary approvals not associated with subdivision maps, the City Council should order an EIR.

Respectfully,



JACK ALLEN
President

cc: Councilmember Bill Rosendahl