

CF 12-0460-S4
FELDSTEIN OPPOSITION
12/17/18

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December 17, 2018

By Email and Personal Delivery
Office of The Clerk of the City of Los Angeles
City Hall, Room 260
200 N. Spring Street
Los Angeles, CA 90012

Re: Council File 12-0460-S4 – OPPOSITION PLEASE PLACE THIS IN THE RECORD OF THIS FILE - Zoning Code/Los Angeles Municipal Code (LAMC)/ Reorganization of Administrative Provisions/Amendment ("Proposal")

Good morning, I had submitted an opposition on November 28, 2018 that has not been posted to the Council File. This letter and its attachments (42 pages total) correct, supercede and replace my November 28th communication. PLEASE PLACE THIS LETTER IN CF 12-0460-S4 AS PUBLIC COMMENT.

This Proposal requires a fundamental redrafting and a return to the Department of City Planning (DCP) for corrective action.

1. First, the process by which the Proposal has been presented is a violation of due process, of State law and of the City's own process. Even the Staff Report accompanying the Proposal contains demonstrable errors and it was not until the publication of a 948 page document in mid-September, 2018 that DCP disclosed what DCP proposed to DELETE from the Los Angeles Municipal Code (LAMC). The entire outreach and submission process conducted is clearly erroneous, flawed and misleading

2. Second, the Proposal is substantive not merely "procedural." It incorporates and allows "State law" to set the parameters for authority of, and delegate authority to, the Mayor, the Director of Planning, the Advisory Agency and Council. The casual references to State law in fact may be viewed as eroding our status as a Charter City. That delegation by ordinance could irreversibly cede control that we as a Charter City have over large swaths of our own destiny, to the State, thereby implementing the default provisions of the Government Code that otherwise would not apply or would apply differently to Charter Cities. And nothing in the outreach or the Staff Report even mentions much less weighs the ramifications of such a radical policy departure.

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3. **Third**, the Proposal transfers legislative authority away from Council to the Mayor, the Director of Planning and the State.

a. **Less Legislative Authority for Council:** The proposal only refers to one of the Charter powers of Council and does not include Council's authority, powers and obligations under the Charter to:

- *confirm (or not confirm) the appointment of, set the salary parameters for or define the scope of authority of the Director of Planning

- *override a mayoral veto

- *speak for the City

- *initiate legislation including for planning, zoning and land use

- *establish the elements for the General Plan

- *delegate public hearings to the Neighborhood Councils

- Even within the shrunken jurisdiction left to Council by the proposal, Council is a passive, reactive body that is left to "accept" or rubberstamp specific matters brought before it by the DCP (in consultation with the Mayor) or act on the few remaining appeals to Council under Zoning Code.

b. **Legislative Authority For the Mayor:** The Mayor's authority over Zoning, Planning or Land Use is very limited under existing law. First, the Mayor can veto any legislation but the veto is subject to Council override. Second, the Mayor's may review and recommend to Council on the General Plan or other limited legislation only in the 30 days AFTER an amendment has been approved by the CPC in a public hearing. The Mayoral input made directly to Council **only after the City officials appointed by the Mayor make an independent decision** has been structured to minimize impropriety or the appearance of impropriety. The Charter and the LAMC separate the appointment power from the substantive authority to avoid the conflict that could arise or be perceived to arise if Mayor or the Mayoral staff could freely direct the Director of Planning or DCP staff on what changes to make, openly participate in the drafting and otherwise influence the day to day work of a Department whose head serves at the pleasure of the Mayor. Any changes to that authority are a significant departure from existing law. To compound matters the Proposal also allows the Mayor to exercise powers delegated to him by "State law" and that is particularly pernicious and in derogation of our Charter and Council's authority.

c. **Authority to the Unelected Director of Planning.** The Proposal sets up Director of Planning and the Director's alter ego, the Advisory Agency (which the Proposal enshrines under State law and the Charter without the restrictions of LAMC Chapter 1, Article 7) as the omnipresent source of nearly all Zoning, Planning and Land Use legislation, interpretations, decisions on all projects big and small, grantor of alternative compliance and adjustment flavors, and, in most cases, free of Council review or appeal. Examples of the specific powers newly granted to the Director are set forth below and in the attachments, but it is clear that the statutory grant of powers and authority mirrored by the change in nomenclature (from "director's decisions" to "Director's Determinations" from "site review" and "project permit compliance" to "Project Review) coupled with the

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changes in procedure -- shortening already impossibly short notice periods, failing to include Neighborhood Councils, increasing the ability to waive public hearings and to grant entitlements and "Adjustments" even without a public hearing, failing to include advance notice and the early notification system and limiting appeals to a single level of appeal or to no right of appeal at all, combine to vastly increase the Director's power, authority and decision making authority.

4. Fourth, the omission, curtailment and derogation of participation by citizens and our elected Neighborhood Councils is a substantive change that requires this Proposal be sent back for revision.

a. DONE and the NCs are the only charter entities involved in Zoning that are not included in the ordinance. They need to be added.

b. There is no reference to the early notification system in the LAAC or the early warning system in the Charter. When the Proposal meant to leave something unchanged, it says so. Section 13.1.5 specifically lists the Cultural Heritage Commission among the authorities and refers back to the LAAC. The Early Notification System enshrined in the Charter and the LAAC needs to be similarly incorporated into the Proposal for the benefit of all citizens and the NCs.

c. The Neighborhood Councils are surgically excised from the mailed notices required for Director decisions and determination. That needs to be corrected.

d. The excuse that the reduction from 500 feet to 300 feet was necessitated by a "standardization" of notices is falderal. There are still processes that remain in the truncated LAMC Chapter 1 with 500 foot radius notices so the reason given for reducing the radius is demonstrably wrong.

e. The reduction of notice period to 21 days is a policy issue particularly when even 24 days is too short a time period for most appeals. PLUM and Council should ask whether the DCP considered expansion to 75 days to "standardize" the time frame to match the current periods for consideration of an appeal by city entities. Shortening the time frame has the effect of making appeals virtually impossible for citizens particularly without incorporating the Early Notification System and advance notice.

PLUM and Council must reject the Proposal and return it to the DCP for clarification, revision and recirculation.

SPECIFIC EXAMPLES

A. The Flawed Submission Process Requires the Return of this Proposal to DCP

Up through and including during the City Planning Commission Hearing on October 11, 2018 (CPC Hearing), DCP repeatedly described this Proposal as a procedural reorganization, without substantive changes. That statement is not accurate. Whether by inadvertence, design, or misunderstanding, the Proposal has substantive changes that are misstated in or omitted from the Staff Report. DCP was aware that certain citizens

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including the undersigned had reviewed and found flaws in the 948 page submission by DCP to the City Planning Commission (CPC) that included a "September 12, 2018 DRAFT" "Processes and Procedures Ordinance" before the CPC Hearing and had started to summarize the differences between the DCP outreach presentations and reality of the text submitted to the CPC for consideration and approval.

Prior to the CPC Hearing, DCP staff even conceded one of the points raised by citizens and said it would be fixed. The language was changed but the point was not fixed. **At the CPC hearing, DCP Staff conceded that:**

"the language may be confusing and could lead to that interpretation" [speaking about changing Charter and Council authority] and that the DCP would be "comfortable amending the language or removing any confusing language altogether." Despite that statement, DCP did not do any of that.

Immediately after the hearing and through mid-November, DCP staff met and corresponded with citizens, providing assurances that nothing would be proceeding until all comments and corrections were done. Those statements to the public were not true and appear to have been made for the purpose of keeping citizens quiescent. In the midst of discussions, without notice or disclosure, DCP did an about face and submitted the Proposal to City Council's (Council) Planning and Land Use Management Committee (PLUM). The submission was made in a deceptive, camouflaged manner that made it very difficult for citizens to find the newly titled, newly captioned, and newly dated "October 11, 2018 DRAFT" of the "Processes and Procedures Ordinance" - now entitled "Zoning Code / Reorganization of Administration Provisions (Processes and Procedures Ordinance) / Los Angeles Municipal Code (LAMC) Amendment" as submitted to PLUM. In submitting to PLUM, DCP did not disclose it was a differently dated draft and did not provide an explanation of the changes or a comparison of the two drafts. The submission to PLUM in this completely disconnected manner made it very difficult for citizens to find and identify that it was the same ordinance resulting in delay.

B. The Ordinance Is Not Just Procedural

The DCP repeatedly stated that "we are simply maintaining the existing processes", "streamlining", "collecting processes scattered throughout the Code and putting them all in one place" so that they are "easy to find and use" but without change". That is not an accurate description of this Proposal.

***Example 1-- Preamble to New Division 13.1 in Chapter 1A:**

"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**. If the agency is established by another body of laws such as the city charter **or State law**, cross-references to those laws are provided."

New administrative agencies and the omissions, or changes in the authority, of Charter entities are substantive items.

The allocation of powers and duties of agencies is substantive.

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The explicit incorporation of "State law" into the municipal laws of our Charter City is substantive. All of the above have consequences well beyond a "procedural" reorganization and are completely outside the norm for other restatements and reorganizations of this type. Examples of the comparable provisions of the LAAC and the LAMC where a change is truly "procedural" and not intended to disturb existing structures are set forth in **Attachment A** to this correspondence for your consideration, along with a proposed redraft of this and other offending sections for your consideration. In addition, as drafted this Proposal could specifically allow the State to dictate that allocation or delegation and thus **all references to delegation, authority or limitation by reference to general "State law" must be deleted. A summary of some of the changes by reference to State law is in Attachment B.**

***Example 2 – Division 13.2.1:**

Section 13.2.1 of the Proposal says that it applies to all applications to amend any part of the zoning code (including the text and zoning maps), all discretionary approvals (including entitlements) and all other activity set forth in the Proposal, including:

ALL Legislative Decisions (currently the sole province of City Council);

ALL Quasi-Judicial Decisions: (including interpretations of ordinances and their application to projects – currently the province of Zoning Administrators or Commissions subject to appeal to Council); and

ALL Municipal Decisions.

Read literally, Sections 13.1.1 (discussed further in Section C. below) and 13.2.1 are a wholesale reallocation and reassignment of the authority, powers, and duties set forth in the City Charter and the current LAAC and LAMC, not a simple "procedural" reorganization. There are a number of other examples but the point is clear – this is a wholesale rewrite of who can do what to whom, not just a move of the same pieces to different places.

Even the DCP staff had to admit at the CPC Hearing that:

"With regards to the comment about the authorities, the City Council authority and **how that would be modifying the City Charter, that is definitely not our intention but we understand that the language may be confusing and could lead to that interpretation.** In consultation with the City Attorney **it was not determined that that would be the case but we are comfortable amending the language or moving any confusing language altogether** regarding that point if that would satisfy that. [CPC Hearing Transcript at 38:08-38:37]

The authorities section should be reserved until it can be fixed properly or simply say that all entities established or required by the Charter or the LAAC shall retain all powers, duties and authority as set forth in the City Charter or the LAAC, as applicable.

C. Impermissible Allocation or Delegation of Legislative Authority away From City Council to the Mayor, the Director of Planning and the State, all in violation of the City Charter

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The entirety of the Division entitled "Authorities" should be deleted and reserved at this time. There is no reason to be revising the provisions regarding the authority and power of the various agencies in a purely "procedural" ordinance that just "reorganizes" what is there. Descriptions of the authority of each entity go to the very heart of substantive changes. However, if PLUM and Council are inclined to proceed to specific provisions regarding authorities, below are some of the critical examples of what needs to be corrected.

***Example 1 – The Proposal (Division 13.1.1.C.) only refers to City Charter Sec. 240 as the source for Council's general authority over planning, land use and zoning.**

That is inaccurate. The section needs to be amended to include, at a minimum, Council's legislative authority under City Charter sections to

- (a) confirm (or not confirm) the appointment of, define and redefine the scope of authority for, and set the salary parameters for the Director of Planning, Charter Section 203 and 213-214 and 502-508;
- (b) override a mayoral veto,
- (c) speak for the City in the face of mayoral inaction or on matters of State or Federal law,
- (d) initiate legislation including for zoning, planning and land use,
- (e) establish the elements for the General Plan, and
- (f) delegate matters to the Neighborhood Councils or Area Planning Commissions.

Sections of the City Charter and the LAAC that need to be incorporated into Council's General Authority in the Proposal are in Attachment C.

***Example 2 – The Proposal (Division 13.1.1.D.) impermissibly limits Council's "Specific Authority" to, for example, "adopt or amend" the General Plan, a Specific Plan, the Zoning Code, or a Zone Change, "approve, conditionally approve or deny" a Class 3 Conditional Use Permit on appeal from the CPC, a Project Exception on appeal from an Area Planning Commission (APC), or a Nuisance Abatement/Revocation on appeal from the Zoning Administrator, and "accept" Final Maps and Final Parcel Maps.**

The examples continue throughout the Proposal, setting Council up as a passive, reactive body that initiates very little but simply is there to rubberstamp or act on a limited basis on those matters presented to Council by the newly more powerful Director of Planning or that otherwise bubble up to Council on the limited appeals permitted from other bodies. That is a complete turnabout from what the City Charter requires and should be deleted. Council retains all original legislative authority and jurisdiction over all planning, zoning and land use unless and until the Charter is changed by the voters. As an aside, even if Council decided that it wanted to delegate or transfer its legislative authority in the manner this Proposal sets forth, it could not do so under the Charter without a Charter amendment. **See Attachment D.**

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***Example 3 - SEC. 13.1.2. impermissibly establishes a mightier Mayoral Office.**

Subsection D. lists "Specific Authority" of the Mayor, none of which falls within the purview of the Mayor today as drafted. Section 13.1.2.D.3 is the most obvious and egregious since it purports to give the Mayor any other authority "delegated by State law." As a Charter City, Los Angeles has never ceded to the State authorities in Sacramento the power to decide who within the City gets to do what on behalf of the City. To the contrary, where the Charter considers the matter, the Charter is clear that Council, not the Mayor, controls the official position of the City. E.G. Charter section 254.

The other items listed for the Mayor also expand mayoral authority (otherwise why not just reference the Charter or any substantive provision of the LAAC or the LAMC?). The Mayor already may submit recommendations pertaining to the General Plan in the manner set forth in Section 555 of the Charter – that is, recommendations submitted by the Mayor within 30 days on the version forwarded to the Mayor as approved after a public hearing by the CPC forwarded to Council. Nothing in the existing Charter would permit the Mayor or any of the executive staff to huddle with the DCP, the Director or any other appointed officials to draft or exchange "suggestions" or recommendations. Yet this broader language would seem to permit precisely that, a result that, at a minimum, could seriously erode Council's legislative authority and violate the public's rights to transparency and good government under the City Charter. There are already citizen concerns about the potential for conflict when senior planners are sent "on assignment" for months or more than a year to the Mayor's office and then return to DCP.

Similarly, while the Mayor may approve or veto any Ordinance pursuant to the City Charter, there is no special or specific authority to approve or veto Specific Plans, the Zoning Code or a Zoning Code amendment, or Zone Changes. To the contrary, those types of legislative actions have required specific findings under Section 558 of the Charter and of course all vetos are subject to Charter override by Council under Section 550. Singling these three areas out for "specific" mayoral authority could be read as an effort to transfer them out of the purview of Council override and out of the requirements of Section 558 of the Charter. Therefore, if there is no intent to convey any additional authority to the Mayor, which the DCP repeatedly has said there is not, the text in Subsection D. could and should simply refer back to Charter section 555 (for the general plan) and Charter sections 250, 252 and 254 (all referencing Mayoral power to approve or veto ordinances and resolutions subject to override by Council).

***Example 4 - Powers of the Director of City Planning as Director of Planning and as Advisory Agency.** Under existing law, the Director of Planning has very limited authority to make any determinations for the City. Nearly all of the Director's powers over specific projects, legislation, and zoning are limited to recommendations, records, and initial decisions that are subject to appeals. In fact, even the Director's decision on an

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appeal from the Department of Building & Safety is not final until the appeal period(s) ends without an appeal to an Area Planning Commission or a City Planning Commission for the setting of a public hearing on 24 days prior notice. And while the decision of a Commission is final without further right to appeal, the LAMC makes it expressly subject to Council's powers under Charter section 245.

Similarly, the Director's actions and appointment as Advisory Agency are subject at all times to the legislative authority of Council, the advance notice required by the early notification system, the prompt mailed notice required under the LAMC and the rights of appeal of an aggrieved party. All Director decisions and determinations are "initial" decisions for the City that do not become final until after notice and the passage of time without a timely appeal. Some of the limits on the powers of the Director of Planning under existing law are summarized in **Attachment E**.

The Proposal (Sections 13.1.6 and 13.1.9) establishes 30 categories of "Specific Authority" assigned to the Director of Planning of which 8 are in his capacity as Advisory Agency. Of the 30 total, 22 of the newly created categories of authority are Director Determinations (as opposed to "initial decisions") without appeal or with limited appeal to the Area Planning Commission or the City Planning Commission without the guardrails under existing law of advance notice and on shortened and more limited after the fact notice. The categories are implemented without incorporating the Early Notification System in place today for Neighborhood Councils and other interested parties, an egregious departure from existing law discussed more fully under Section C below. Some even provide for the Director to exercise discretionary land use legislative authority (e.g. "Alternative Compliance" without notice, public hearing or appeal). Others allow the Director to INITIATE an interpretation of a Specific Plan and do so by posting on the DCP website – that sounds like rulemaking authority which the Director does not have and rulemaking at its worst – by Director initiative without notice, input, hearings or anything else, suddenly boom it's on a website.

Similarly, Sections 13.4.4, 13.4.5 and 13.6 of the Proposal permit the Director to decide, in a back room, without prior notice and with REDUCED after the fact notice and right to appeal, whether to grant, conditionally grant or deny and whether to hold a public hearing of, among other things, project applications whether or not they "result in an increase of 50,000 gross square feet of nonresidential floor area" or "50 or more dwelling units or guest rooms." That is a complete departure from existing law, which requires both advance notice under the Early Notification System to Neighborhood Councils; and after the fact prompt notice that would have been informed during the process of early notification to permit at least 24 days in which to appeal. A summary of Section 13.6 and the expansion of the Director of Planning's powers under that section is attached as **Attachment F** to this letter.

D. Omission and Curtailment of Due Process and Charter Rights of Neighborhood Councils (NC), Residents, and other Interested Parties. The Proposal openly states

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that in the interest of "standardizing" and "streamlining" it proposes to **reduce** the appeal period for Projects and most decisions from 24 to 21 days. PLUM and Council should reject this on two grounds. **First**, even the 24 day period under current law is almost impossibly short for most residents to organize, hire counsel and file an effective appeal. **Second**, and most importantly, that is NOT all this Proposal does to notice, public hearing and appeal rights, none of which is discussed or disclosed. It:

- *Omits the Charter protected rights of NCs and the LAAC protections for all residents and NCs requirements of advance notice and an Early Notification System

- *Reduces the post-decision notice periods and recipients

- *Limits appeals to one level of appeal without describing where it is changing existing law permitting two levels of appeal

- *Inadequately explains why the changes in decision maker – from Zoning Administrator to Director on Adjustments and from Director to Zoning Administrator on Nuisance Abatement – are "procedural" and not substantive changes or why they are warranted.

***Example 1 – Early Notification Required to Neighborhood Councils and Provided to Interested Parties:**

A. Notices to Neighborhood Councils of Applications as Filed: The Staff Report says: "the subject ordinance does not propose to make any changes to current notification requirements as they relate to the certified Neighborhood Councils." **Existing Law** (Charter section 907) specifically requires an "early warning system" to NCs as soon as practicable for notice to and input from NCs while Los Angeles Administrative Code (LAAC) sections 22.809(f) and 22.810.1(f) both require the City to maintain an "Early Notification System" advance notice to NCs and other interested parties. LAMC section 12.22.A.25(g)(2)(i)(d) requires transmittal of written decisions within three business days **to, among other parties, the local Certified Neighborhood Council. The Proposal omits and deletes any reference to NCs in this process.**

DONE and the NCs are the ONLY Charter entities not included in the "Authorities" section of the Proposal. THEY MUST BE ADDED. In addition, the Proposal surgically excises the LAMC requirement for transmittal of written decisions to NCs. Section 13.4.5.F.4. THAT NEEDS TO BE CORRECTED. These and other notice Sections are deleted, modified or otherwise changed and that makes all the outreach and assurances from the DCP that no substantive changes were being proposed misleading. There also appear to be changes to the substantive provisions of the LAMC as moved into the Proposal in connection with Coastal Commission Permits, HPOZ and Affordable Housing provisions but without a proper apples to apples comparison, these have been difficult to track. **Attachment G** is a summary and a chart of the changes made by this Proposal in just one area – the transformation of "Site Review" and "Project Permit Compliance" under LAMC into "Project Review" under this Proposal.

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The name change, the failure to explain to the public how the Proposal fits into the broader picture, the drafting changes between September and October, the errors in the staff report, the misleading characterization of the Proposal as purely procedural, and the other process failures, including a lack of transparency as to whether and which outside counsel was consulted in the drafting of this Proposal or is being consulted in the drafting of the new Zoning Code, could be read as an effort to push through an opaque agenda of controversial changes by any means deemed necessary or expedient.

In returning this Proposal to the DCP, PLUM and Council should require that all changes to existing law and the anticipated content and context of the new Code must be transparently and fully explained. The DCP should remove all references to State law, all allocations of "authority" and all "streamlining" that reduces citizen participation in the Planning and Zoning process.

Thank you for your consideration of this opposition,

Hydee R. Feldstein

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ATTACHMENT A (Examples of Preambles in Existing Codes and of Proposed Comparable Provisions for this Proposal)

Attachment A (2 pages)

LAAC Code: Sec. 1.2. Existing Law Continued. The provisions of this Code as initially enacted, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

Sec. 1.3. Construction. The provisions of this Code and all proceedings under it are to be construed with a view to effect its objects and to promote efficient and expedient administrative procedures.

Sec. 1.4. Effect of Code on Past Actions and Obligations Previously Accrued. Neither the adoption of this Code nor the repeal hereby of any ordinance of this City shall in any manner affect any proceedings which have been instituted or commenced prior to the effective date of this Code.

LAMC Code (General): SEC. 11.00. PROVISIONS APPLICABLE TO CODE.

(a) **Short Title. Reference to Code in Prosecutions. . . .**

(b) **Existing Law Continued.** The provisions of this Code, to the extent they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations of the Code and not as new enactments.

(c) **Construction.** The provisions of this Code and all proceedings under it are to be construed with a view to effect its objectives and to promote justice.

(d) **Effect of Code on Past Actions and Obligations Previously Accrued.** Neither the adoption of this Code nor the repeal of any ordinance of this City shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date of the ordinance, nor be construed as a waiver of any license or penalty at the effective date due and unpaid under the ordinance, nor be construed as affecting any of the provisions of the ordinance relating to the collection of any license or penalty or the penal provisions applicable to any violation, nor to affect the validity of any bond or cash deposit in lieu of a bond, required to be posted, filed or deposited pursuant to any ordinance or its violation, and all rights and obligations associated with the ordinance shall continue in full force and effect.

LAMC Code (Zoning): SEC. 12.01. CONTINUATION OF EXISTING REGULATIONS. The provisions of this article, in so far as they are substantially the same as existing ordinances relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

SEC. 12.02. PURPOSE. The purpose of this article is to consolidate and coordinate all existing zoning regulations and provisions into one comprehensive zoning plan in order to . . .

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ATTACHMENT A , Page 2 of 2

Proposed Fix for Example 1 in Section A– Substitute the following: for the Preamble to 13.1:

"This Division reorganizes in one place the agencies involved in administering Chapter 1 of the Los Angeles Municipal Code (LAMC) and the processes and procedures that govern proceedings before those agencies. This Division is not intended to and does not change those powers or duties in any manner except where specific reference is made to a specific provision of the existing LAMC as replaced or repealed. Nothing in this Division 13 alters, amends or modifies the City Charter or adds to, detracts from, transfers or delegates any of the powers or duties of any Charter entity as set forth in the City Charter or existing provisions of the Los Angeles Administrative Code or the Los Angeles Municipal Code immediately prior to the enactment of this Division by Ordinance."

Proposed Fix for Example 2 in Section A. - substitute the following for Division 13.2.1:

Division 13.2.1. APPLICABILITY

A. PURPOSE. The purpose of this Division is to consolidate and relocate all existing zoning procedural provisions into one comprehensive division and, where indicated specifically, to modify the internal processes of the Department of Planning.

B. CONTINUATION OF EXISTING LAW, POLICIES AND REGULATIONS. The provisions of this Code as initially enacted, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments. The existing policies and regulations of the Los Angeles Administrative Code and the Los Angeles Municipal Code, except as explicitly referenced in this Division 13 as repealed or replaced hereby, are continued in full force and effect.

C. RELATIONSHIP TO OTHER LAWS. Nothing contained in this Division 13 is intended to nor should be deemed to (i) change the City Charter or the Los Angeles Administrative Code; (ii) alter, delegate or transfer any of the authority, powers or responsibilities of City Council or any other Charter entity under the City Charter or the Los Angeles Administrative Code; or (iii) change, grant, transfer or delegate any authority, power or duties to the executive, appointed or elected authorities of the City, all of which legislative authority is expressly retained by City Council as established in the City Charter. Nothing contained in this Division 13 is intended to nor should be deemed to alter, amend or modify the powers of the City of Los Angeles as a Charter City under State law or the relationship of Los Angeles as a charter city to the State of California or its laws.

ATTACHMENT B (Incorporation of State Law Eroding City Charter)
Attachment B (6 pages)

The Proposal specifically incorporates State law that otherwise COULD NOT apply to Charter Cities such as Los Angeles OR if applicable, only set MINIMUM standards leaving Charter Cities such as Los Angeles free to require more notice, or better environmental protections. The Proposal eliminates the environmental review of proposed developments required not only under CEQA but also for effect under a Specific Plan and mitigation of negative environmental effects on surrounding areas.

1. The Proposal is "top down" centralization of power in fewer hands at every level.
2. The Proposal allows the STATE to reallocate power and authority as between Los Angeles City Council and the Mayor, in violation of our City Charter.
3. The Proposal ADOPTS MINIMAL state noticing and public hearing requirements and allows their use instead of the greater notice and hearing requirements of the Los Angeles Municipal Code or this new Zoning Code.
4. The Proposal adopts the State "Permit Streamlining Act" wholesale including future amendments.
5. The Proposal adopts the state environmental laws wholesale, eliminating all references in our Municipal Code to environmental considerations.

*What happens if or when CEQA is weakened or repealed?

These are all unwarranted abandonments of Charter City power to the State.

Side By Side Apples to Apples Comparison
 STATE LAW

DELETED TEXT IN RED

Text in Blue Highlight is a New Incorporation of State Law Into LAMC

New text in **UPPER CASE** or in *bold italics*

EXISTING LAW:	PROPOSAL:	DIFFERENCES:
California State Constitution Article XI [Local Government] Section 5(b) gives a Charter City ultimate authority over "municipal affairs." Planning, Land Use and Zoning do not apply to Charter Cities (see California Gov't Code Section 65803) and these as well as the allocation of power, responsibilities, manner of	<p>Section 13.1.1.D.12 re: Council:</p> <p><i>Section 13.1.1.D.12 re: Council:</i></p> <p>Section 13.1.2.D.4 re: Mayor:</p> <p><i>Section 13.1.2.D.4 re: Mayor:</i></p>	<p>DELETE references to state law. Providing that State law can allocate or delegate powers as between our Council and our Mayor is in derogation of our Charter. Since this is an ordinance however, if it passes, it will be deemed effective.</p>

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<p>election or appointment, etc. among city officials and departments have historically been considered to be "municipal affairs" that are reserved to charter cities.</p>	<p><i>The Los Angeles Zoning Code.</i></p>	
<p>Charter Section Los Angeles as Charter City - Sec. 101. Powers of the City. The City of Los Angeles shall have all powers possible for a charter City to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in the Charter, subject only to the limitations contained in the Charter.</p>	<p><i>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. If the agency is established by another body of laws such as the city charter or State law, cross-references to those laws are provided.</i></p>	<p>State Law does not belong in our Charter or our laws as a source of authority or power. It may bind the City from enforcing its own laws but it is never the source of the City's internal laws. There is not one instance in existing law where the authority of any entity is defined as "delegated" or "established" by State law. References to State law in the existing LAMC are rare and often appear as "and otherwise consistent with XXX" where XXX is a reference to a specific State Government Code section</p>
	<p><i>Section 13.2.3.B.2. The City will not process incomplete applications. Applications will be reviewed for completeness in accordance with the Permit Streamlining Act (California Government Code Title 7, Division 1, Chapter 4.5, as may be amended from time to time).</i></p>	<p>Although the Permit Streamlining Act states that it applies to Charter Cities, this would be an election in by Ordinance and is a significant change from existing processes and procedures</p>

	<p><i>13.2.4.E. Additional Notice Beyond Legal Requirements</i> <i>The City may provide additional notice not required by this Article or State law at its discretion.</i></p> <p><i>13.2.4.G. State Noticing Requirements. Where applicable, the City may provide notice consistent with California Government Code Sec. 65804.</i></p>	<p>The first is fine – the City can always elect to give MORE notice. The second provision does not belong here. Government Code Section 65804 applies to charter cities already but what it does is to set MINIMAL DUE PROCESS REQUIREMENTS FOR NOTICE. NOTHING there stops a Charter City like Los Angeles from adopting GREATER notice or hearing requirements and that is what we have done. By including G, this Proposal appears to allow the City to opt out of the greater notice requirements in the Charter or the Los Angeles Codes (including this new Proposal's notice sections) and instead opt for the minimum notice required by State law. All references to State law should be deleted.</p>
	<p><i>13.2.5.A.1 . . . Unless otherwise provided in the regulations governing the particular application or State law, this time limit may be extended by mutual consent of the decision maker and the applicant.</i></p>	<p>The time limits in the Los Angeles Code for the City to take action or whose consent is necessary to extend that time period are not and should not be set by State law. Delete State law reference.</p>
	<p><i>SEC. 13.2.4. NOTICE</i></p>	<p>This should be subject to the</p>

	<p>OF PUBLIC HEARING A. Public Hearing Purpose <i>A public hearing gives interested parties an opportunity to be heard. The specific processes for providing testimony and conducting the hearing are established by the agency that conducts the hearing, subject to State law requirements.</i> B. General Procedures for Notice of Public Hearing 1. In certain cases, state law establishes specific requirements for public notice. Unless otherwise provided, the notice established in this Article is as provided in the table below.</p>	<p>specific provisions set forth below in this [Division/Chapter/Article]. So if State law only requires 72 hours notice but the provisions below require 24 days prior notice, the provisions below should clearly govern.</p> <p>State law only establishes MINIMUM requirements. This section should be deleted but if retained, change the word "specific" to "minimum" in the first sentence and change the second sentence to "In all instances, the greater of the notice provided by this Article or the minimum required under Government Code 65804 shall be provided.</p>
	<p>"State law" appears in Table 3 twice,</p>	<p>Delete.</p>
	<p>Section 13.10.2.A.1 automatically exempts all Parcel Map reviews exempt under state law from WITHOUT any discussion as to which State law is referenced or whether it applies to Charter Cities such as Los Angeles.</p>	<p>DELETE all references to state law. Where the intent is to mirror state law and exempt the same types of parcels, need to describe it here as a matter of Los Angeles Municipal Law in order to avoid eroding or violating the City Charter.</p>
	<p>Section 13.10.3.C.3 and</p>	<p>AGAIN, these are the</p>

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	<p>13.10.8.C. each references the requirements of state law.</p>	<p>MINIMAL requirements imposed on any city/county/state as a matter of MINIMAL due process. Currently our City laws require MORE and the reference to state law cuts back on citizen participation, notice and rights. DELETE.</p>
<p>LAMC 11.5.7 provides a period of 75 days for a determination after "the EIR is certified as complete consistent with State law"</p>	<p>Section 13.14.1.D.4.c. sets the date for finality of a determination for "Project Approval" of a "Sustainable Communities Project Approval" by unspecified reference to "state law".</p>	<p>Los Angeles currently sets its own timeline and its own environmental requirements (which must comply with CEQA). City laws can and sometimes do have higher or different standards for environmental review and mitigation. The change in language is unclear and again cedes ground to the state that is otherwise reserved to a charter city.</p>
<p>For example, LAMC Section 11.5.7.C(1)(b) and (2)(b) specifically require the Director of Planning to conduct an environmental review and make specific findings that the Project is in compliance with a Specific Plan and to mitigate the negative environmental effects of the project on the surrounding area.</p>	<p>Div. 13.14 substitutes CEQA and state law for all environmental processes currently required for projects. CEQA however does not always apply to all projects and is in some areas less rigorous than the environmental review, mitigation and monitoring required by the existing provisions of the LAMC.</p>	<p>State law cross references wherever they appear should simply say "as necessary to comply with any State law properly applicable to Charter Cities" to avoid giving away city charter authority, ex. 13.10.8.C . 13.12.2.D.5 and elsewhere. Short version: All references to CEQA or other state law should be deleted or limited to requiring "compliance with any State law properly applicable to Charter Cities" in order to avoid eroding our Charter. In addition, our municipal law</p>

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		<p>environmental requirements should be preserved. The independent environmental references and requirements are a check on CEQA repeal or amendment which seems increasingly likely. In addition, our local ENV requirements take into account cumulative impact and mitigation factors that EVEN IF NOT REQUIRED BY CEQA, ARE REQUIRED BY OUR LAMC. Thus, "standardizing" to CEQA not only cuts back on our existing greater environmental goals BUT MORE IMPORTANTLY subjects us to a curtailment or repeal of CEQA which some of our sitting legislators has in Sacramento have said is a goal of theirs.</p>
	<p>Sec 13.14.1.A.4 CEQA and the CEQA Guidelines, as applicable, are incorporated and made a part of this Section as though fully set forth herein. In the review and approval of Projects under Article 13, all officers and employees of the City shall enforce and comply with each and every applicable provision of CEQA and</p>	<p>This is a wholesale abandonment of Los Angeles' rights as a Charter City to impose additional or different requirements from CEQA for its own environmental review. Moreover, there are new CEQA Guidelines that are not scheduled to take effect statewide until 2020 unless earlier adopted by a city or county. Does this proposed ordinance intend to incorporate the old or the new Guidelines (if incorporation</p>

	the CEQA Guidelines.	were appropriate which it is not).
	<p>13.14.1.B. CEQA Review Responsibility</p> <p>1. Director of Planning Responsibilities The Director of Planning shall prepare all environmental documents necessary to comply with CEQA and the CEQA Guidelines, and assist the decision maker in approving CEQA Clearances.</p> <p>2. Director of Planning Authority The Director of Planning may:</p> <p>a. Issue administrative guidelines to implement CEQA and this Section, consistent with CEQA, the CEQA Guidelines, this Section, and any City Council policy; and</p> <p>b. Determine environmental significance based on applicable administrative guidelines, CEQA and the CEQA Guidelines.</p>	<p>This is a wholesale abandonment of Council's legislative authority over environmental effects, mitigation and monitoring to the Director of Planning.</p>

ATTACHMENT C (Charter and LACC Powers NOT in Proposal)

COUNCIL CHARTER SECTIONS:

203 (Council power to confirm appointments including of Director of Planning),
213-214 (Council power to prescribe scope or creation of departments or officers to the extent not in conflict with Charter),
245 (Council assertion of jurisdiction over, veto of and other authority to act on Board or Commission matters),
247-248 (Council powers over public improvements, bonds and other City indebtedness),
250-254 (Council's power to override mayoral veto, make ordinances effective in the face of mayoral inaction, to pass Urgency Ordinances and to make resolutions establishing the official position of the City on State or Federal Legislation),
502 and 508 (Council's power to confirm, set salary parameters for and hear appeals from the dismissal of Chief Administrative Officers including the Director of Planning),
514 (transfers of powers initiated by Mayor can be overruled by Council and in any event cannot be effected for powers of elected officials),
554-558 (Parameters and Procedures for General Plan and for zoning or other land use regulations),
562-565 (Procedures, findings, appeals for variances, conditional use permits, projects requiring multiple approvals),
and **908** (Delegation by Council to Neighborhood Councils of public hearing).

DEPARTMENT OF NEIGHBORHOOD EMPOWERMENT (DONE) AND NEIGHBORHOOD COUNCILS:

Charter Article IX especially;

Section 907 (early warning system to Neighborhood Councils) and
Section 908 (Council ability to delegate public hearing to

Neighborhood Councils

Los Angeles Administrative Code Sections:

Chapter 28 of Division 22, especially **sections 22.809(f) and 22.810.1(f)** (Early Notification System to DONE and Neighborhood Councils)

**ATTACHMENT D (Delegation or Reassignment of Charter Powers)
Attachment D (2 pages)**

Under the Government Code of the State of California, a City may elect to govern itself by its Charter or may elect to govern itself by provisions under the Government Code. The Charter makes clear that Los Angeles has opted out of the Government Code and elected to govern itself by Charter. The more than a dozen references in the Proposal to "State Law", whether by inadvertence or design, could be read to incorporate State law into Los Angeles' laws by ordinance in violation of the Charter. Section 13.2.1.B states that "This Article does not supercede any provisions of the City Charter or provisions of State law that applied to charter cities." Supercede is an odd choice of language here and provides little legal comfort because the Proposal clearly has language that changes, adds to or amends the City Charter or tries to delegate Council's authority under the Charter even if these provisions do not expressly "supercede" the Charter. The references to "state law" should be deleted and Section 13.2.1.B revised to read that "Nothing contained in this Article, Division or any other section of the Zoning Code alters, amends or modifies the provisions of the City Charter and any initial authority set forth is always subject to the Charter and to Council's powers thereunder, including the power to initiate a repeal or modification of this or any other ordinance of the City."

With the exception of the power of certain departments such as airport, harbor, LADWP, libraries or parks and recreation over their own lands, there are only 3 permitted in the City Charter for the exercise of the legislative authority over planning and zoning otherwise entrusted to Council.

Section 552 gives Area Planning Commissions original jurisdiction to hear and determine Zoning Administrator appeals "with respect to matters concerning property located in the area served by the Area Planning Commission"

Section 581(f) allows the Board of Public Works to exercise the "powers and duties imposed by law **or delegated by the Council** relating to the award of contracts for work specified by section 580" and

Section 908 provides that "the City **Council may delegate its authority to neighborhood councils to hold public hearings** prior to the City Council making a decision on a matter of local concern."

All other legislative authority over planning, zoning and land use is held by Council and cannot be delegated or transferred (including by ordinance) except in a manner where the exercise of that authority remains subject to review by, or appeal to, Council. Charter section 245(d)(8).

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There are Charter sections that permit other Departments to **act as the initial decision maker for the City always subject to appeal to or review by Council** and none of them permit the "delegation" of, as opposed to the initial decision making authority for, Council's legislative authority.

*Section 550 states that "The Department of City Planning shall have and exercise all the powers and duties provided for it in the Charter or by ordinance."

*Section 551(d) says that the City Planning Commission shall "perform other functions prescribed by the Charter or ordinance."

*Section 553 of the Charter states that the Director of Planning shall have "those additional powers and duties provided by ordinance."

*Section 559 allows the CPC to delegate its own original authority but not Council's over certain matters to the Director of Planning and makes it clear that even in exercising the delegated authority from the CPC, "the Director must make the same findings as would have been required for the City Planning Commission to act on the same matter. An action of the Director under this authority shall be subject to the same time limits and shall have the same effect as if the City Planning Commission had acted directly."

*Section 565 allows the CPC, subject to approval by ordinance, to delegate to an APC certain classes or categories of legislative actions within its own original jurisdiction but not Council's that do not have a citywide impact.

By rephrasing and reconfiguring "general" and "specific" authority (especially without including all of the Charter powers of Council and leaving out the Charter mandated powers of the Neighborhood Councils), by appearing to create a special administrative code in the Zoning Code, by changing the Director's initial decisions to "Director's Determinations" and by making the Advisory Agent a Charter power of the Director of Planning under Charter section 553 (and state law), this proposed ordinance amends the Charter impermissibly and those are significant substantive changes that require the Proposal be returned to the DCP for revision.

ATTACHMENT E (Director of Planning Powers Under Existing Law)

*Exercise the same powers as any department head has over the Department of Planning-- hiring or firing of personnel and spending the Department's budget.

*Draft plans, legislation and maps at the direction Council or its Committees or Commissions and make investigations, recommendations or reports, but not decide anything under Charter section 553.

*Act as Advisory Agent, "except as otherwise provided by ordinance." This reference to ordinance limitations retains the primacy of the City's Charter over contrary provisions of the State Government Code and reserves the right to Council to replace the Director as Advisory Agency for the City. Thus, while LAMC section 17.03 appoints the Director of Planning as the "Advisory Agency" for the City of Los Angeles, that appointment is subject to the provisions set forth in that Article 7 "Division of Land Regulations" requiring determinations by Council, its Committees or commissions, upon notice and public hearing and is subject to the right of any aggrieved party to appeal to Council under, for example, section 17.54.

*"Interpret" unclear provisions of the "General Plan and specific plans" ONLY and in all cases "subject to appellate review." LAMC Section 11.5.3.

*Initiate, report on and make recommendations to a Commission or Council regarding proposed ordinances, without any decision making or regulatory authority (see, e.g. LAMC 12.32.A).

*Make limited "Directors Decisions" such as decide appeals from Building & Safety LAMC 12.26.K subject to further appeal to the a Commission or LAMC 12.30.G. and H. for zone boundary adjustments as required, on notice for individual adjustments, to conform the map to the physical block arrangement or for "public necessity, convenience, general welfare or good zoning practice."

*Exercise "initial decision making" authority (see e.g. LAMC 14.5.6 or 14.5.7) subject to **advance notice in compliance with the Early Notification System** to Neighborhood Councils and other interested parties, **prompt mailed notice** to various residents, Neighborhood Councils and interested parties, and **rights of appeal** by aggrieved parties. The Director's Decisions are not a determination by the City until after the process has been complied with and no appeal is filed timely.

In sum, under current law, outside of the administration and management of the Department of City Planning, the Director is in essence a consultant and an initial fact finder for City Council and its committees and commissions but exercise no actual authority to bind the City without advance and after the fact notice and rights to appeal.

**ATTACHMENT F (EXPANDED DIRECTOR OF PLANNING
 POWERS UNDER SECTIONS 13.1 and 13.6)**

The Director today has very limited ability to interpret unclear specific plan provisions subject to notice, appeal, and a public hearing, and to Council's legislative authority. Below are the proposal changes to this limited authority not discussed or disclosed in the Staff Report

1. **ABILITY TO INTERPRET ANY MATTER WITHOUT NOTICE.** The Director can issue an interpretation on self-initiative without any notice to, or input from, anyone.
2. **BROAD RULEMAKING AUTHORITY TO CONSIDER MORE THAN SPECIFIC PLAN UNCLEAR PROVISIONS INCLUDING OTHER CITY AND STATE LAW POLICIES.** The Director's "interpretation" authority is expanded to include other laws and policies. Having the Director of Planning interpret state law effect on City Ordinances is a particular intrusion into the City Charter.
3. **THE DIRECTOR'S INTERPRETATION BINDS THE ENTIRE CITY INCLUDING COUNCIL, THE MAYOR, THE CITY ATTORNEY, PLUM, THE VARIOUS BOARDS, COMMISSIONS (CPC, APCs, HPOZ BOARDS, DESIGN REVIEW BOARDS), AND ALL APPLICANTS.**

*SECTIONS 13.6.6.F. and SEC 13.6.6.H.2. are ASTOUNDING departures from existing law. They are worth setting forth in full even in a summary:

- F. After the interpretation is transmitted, all city commissions, agencies and officials will apply the interpretation unless it is reversed by charter amendment, ordinance, statutory amendment, or a final and binding decision by a court of law.
- H.2. The Director may refuse to accept applications for a different interpretation of the same plan or Zoning Code provision until the plan policies or Zoning Code provisions are amended.

The entirety of these sections must be deleted (along with most of Section 13.6.6). These sections mean that the *Director's interpretation cannot be reversed or modified:*

- *on appeal by anyone;
- *by Council action under *Charter section 245*;
- *by *Council resolution or order*;
- *by *Council ordinance unless there is a mayoral approval or at least an override (which has been omitted from the Proposal entirely)*;

<p>*if based on an interpretation of the City Charter or a provision enacted by ballot measure, <i>potentially by anything that the City of Los Angeles or its voters can pass</i></p>	<p>Side By Side Applying to City of the voters of State law or standards; by anything that the City of Moved Text in Yellow Highlight Charter Issues in Green</p>	<p>provision enacted by "statutory amendment" re: return was based.</p>
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	<p style="text-align: center;">Highlight * or * is a Footnote explaining a cross-reference <i>New text in bold italics</i></p>	
Existing Law	Proposal	Difference
	Staff Report Re: Specific Plan Interpretation (pages 9 and 12) No Changes	See below
<p>LAMC Sec 11.5.3: In addition to the duties set forth in the Charter, the Director of Planning shall have the authority to interpret the meaning of the General Plan and specific plans in instances where there is a lack of clarity in the meaning of these regulations, subject to appellate review. The Director may appoint a designee to act on his or her behalf, in which case, references in this article to Director shall include this designee, unless stated otherwise.</p>	<p><i>See Section 13.1.6 (Director of Planning) of Chapter 1A of this Code. Section 13.1.6.D.2.g. The Director of Planning exercises the following specific authority: . . . g. Specific Plan Interpretation, Section 13.1.6.D.3. The Director of Planning exercises the following specific authority: . . .</i> interpret the meaning of the General Plan and specific plans in instances where there is a lack of clarity in the meaning of these regulations, subject to appellate review</p>	<p>Since the power to interpret appears in TWO sections of the cross-referenced Section 13.1.6 , once in subparagraphs 2.g. WITHOUT the restrictions in the current law and again in subparagraph 3 with the limitation of only where there is a lack of clarity and subject to appellate review, the Proposal would be read to create a new and improved power of Specific Plan Interpretation, irrespective of the clarity or lack thereof and without being subject to appellate review, neither of which the Director has under existing law</p>
<p>LAMC Sec. 11.5.7.A.2. The objectives of this section are as</p>	<p><i>Sec. 13.6.1. General Provisions. A. Purpose</i></p>	<p>No material</p>

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<p>follows: 1. To establish uniform citywide procedures for review of applications for projects with specific plan areas in accordance with applicable specific plan requirements and the City Charter; and 2. To establish uniform citywide standards and criteria for processing applications from, amendments to and interpretations of specific plans.</p> <p>B. Relationship To Provisions of Specific Plans. If any procedure established in a specific plan conflicts with any procedure set forth in this section, the provisions of this section shall prevail.</p>	<p>1. This Division</p> <p>a. Establishes uniform citywide procedures to review applications for projects within specific plan areas in accordance with applicable specific plan requirements and the City Charter; and b. Establishes uniform citywide standards and criteria for processing applications for exceptions from and interpretations of Specific Plans.</p> <p>2. If any procedure established in a specific plan conflicts with any procedure set forth in this Division, the provisions of this Division prevail.</p>	<p>differences in language. There is a difference in application since Section in Proposal is broader and covers more than existing LAMC section which is limited to Project Permit Compliance and Project Permit Adjustments whereas this new section covers a lot more ground.</p>
<p>LAMC Sec. 11.5.7.B.2 To apply for a Project Permit Compliance . . . or specific plan interpretation, an applicant shall file an application with the Department of City Planning . . .</p>		<p>The filing of an application is required under existing law. The filing of an application is sent out in the Early Notification System required under Charter Section 907</p>
<p>C. 4. Director's Decision. * * * * *</p> <p>(b) Transmittal of Written Decision. Upon making a</p>	<p><i>See Table 4 in SEC. 13.2.4.F. NOTICE OF PUBLIC HEARING</i></p>	<p>and Los Angeles Administrative Code Section 22.810.1.f. MATERIAE AND SUBSTANTIVE CHANGES TO:</p>

<p>written decision, the Director shall transmit a copy by First Class Mail to the applicant. Copies shall also be provided to: the Department of Building and Safety; the Councilmember(s) having jurisdiction over the specific plan area in which the property is located; the Department of Transportation, where appropriate; owners of all properties abutting, across the street or alley from, or having a common corner with the subject property; the Department of Neighborhood Empowerment; the chairperson of any design review or plan review board having jurisdiction over the specific plan area in which the property is located; and interested parties who have filed written requests with the City Planning Department.</p> <p>(c) Effective Date of Initial Decision. The Director's [Interpretation] shall become effective after an elapsed period of 15 calendar days from the date of mailing of the written decision, unless an appeal is filed on the decision within that period pursuant to Subdivision 6. of this subsection.</p>	<p><i>Only notice required is of appeal</i></p> <p>SEC 13.6.6.C. Notice of Public Hearing <i>No notice is required, but a public information meeting may be held pursuant to Sec. 13.6.1.B.</i></p> <p><i>See SEC 13.2.4. G. State Noticing Requirements</i> <i>Where applicable, the City may provide notice consistent with California Government Code Sec. 54920.</i></p> <p>SEC 13.6.6.D.3 <i>Transmittal</i> <i>The Director shall:</i> <i>a. Transmit a copy of the interpretation to the applicant by mail; and</i> <i>b. Post a copy of the interpretation on the Department's website.</i></p>	<p>ADVANCE NOTICE <i>(eg no early notification; substitution of minimum noticing requirements for requirements of LAMC)</i></p> <p>NOTICE OF DIRECTOR DECISION:</p> <p>Elimination of ANY NOTICE TO ANYONE in favor of posting on DCP website: no other departments, no Council Member notice, no nearby neighbors, no NCs or design or review or HPOZ boards and no notice even to those who have filed request for notice. So how can anyone even get notice to appeal and given Sec 13.6.6.F, an appeal is irrelevant.</p>
<p>3. Appeals. The City</p>	<p>SEC 13.6.6.E. Standards</p>	<p>[REDACTED]</p>


<p>Planning Commission shall hear appeals on Director interpretations which affect an entire specific plan area or any of its subareas, and the Area Planning Commission shall hear appeals on Director interpretations which are applicable only on a site specific basis. The procedures for filing and processing appeals of Director interpretations shall otherwise be the same as those set forth in Subdivision 6 of Subsection C of this section. [see next section which is C.6.]</p>	<p><i>for review and required Findings</i> <i>In rendering an Interpretation, the Director and City or Area Planning Commission on appeal will consider: 1. Any General Plan, community plan, or specific plan policies that relate to the regulation subject to interpretation; 2. The purpose statements or other official city policies relating to the regulation; 3. The context of the regulation and its relationship to similar regulations; and</i> <i>Any other factors bearing on the interpretation of local ordinances under California law.</i></p>	<p><i>Director's power to consider Specific Plan interpretations that are unclear subject to appellate review to wideranging power to consider and interpret "any policies, context, other regulations, and state law.</i></p> <p>This is a material and substantive change and expands the adjudication WELL beyond the interpretation of a specific plan provision that is unclear for a site-specific application.</p>
<p>6. Appeals. (a) Filing of an Appeal. An applicant or any other person aggrieved by the Director's decision may appeal the decision to the Area Planning Commission. The appeal shall be filed within 15 days of the date of mailing of the Director's decision on forms provided by the Department. . . . The filing of an appeal stays proceedings in the matter until the Area Planning Commission has made a decision. . . .</p>	<p><i>F. Scope of Decision</i> <i>After the interpretation is transmitted, all city commissions, agencies and officials will apply the interpretation unless it is reversed by charter amendment, ordinance, statutory amendment, or a final and binding decision by a court of law.</i></p> <p>Section 13.6.6.H.2. The Director may refuse to accept applications for a</p>	<p>THIS IS MATERIAL AND A COMPLETE REVERSAL OF EXISTING LAW AND THE CITY CHARTER.</p> <p><i>Director interpretation is effective immediately and supercedes and binds all other city authorities including: City Commissions.</i></p>

<p>(b) Appellate Decision - Public Hearing and Notice. Before acting on any appeal, the Area Planning Commission shall set the matter for hearing, with written notice of the hearing sent by First Class Mail at least 15 days prior to the meeting date to: the applicant; the owner(s) of the property involved; owners of properties within 100 feet of the exterior boundaries of the property involved; the Councilmember(s) having jurisdiction over the specific plan area in which the property is located; the Department of Neighborhood Empowerment; the chairperson of any design review or plan review board having jurisdiction over the specific plan area in which the property is located; and interested parties who have requested notice in writing.</p> <p>(c) Time for Appellate Decision. The Area Planning Commission shall act within 75 days after the expiration of the appeal period or within any additional period mutually agreed upon by the applicant and the Area Planning Commission. The failure of the Area Planning Commission to act within this</p>	<p><i>different interpretation of the same plan or Zoning Code provision until the plan policies or Zoning Code provisions are amended.</i></p>	<p><i>including the CPCs (APCs)</i> <i>City Agencies: (including LADBS, LADOT, Parks & Recreation, etc and City Officials: the Mayor, City Council, the City Attorney, etc.</i> <i>ND is reversible solely by "charter amendment" ordinance" statutory amendment" (which is either an ordinance or State law) or a final and binding decision of a council law"</i></p> <p>PARAGRAPHS F AND H.2 NEED TO BE DELETED AND Section 16.6.6 needs to be revised in its entirety to be sure to provides that:</p> <p><i>A Specific Interpretation may only be made on application, advance notice to specific residents, City Councilmember, other agencies, Neighborhood</i></p>
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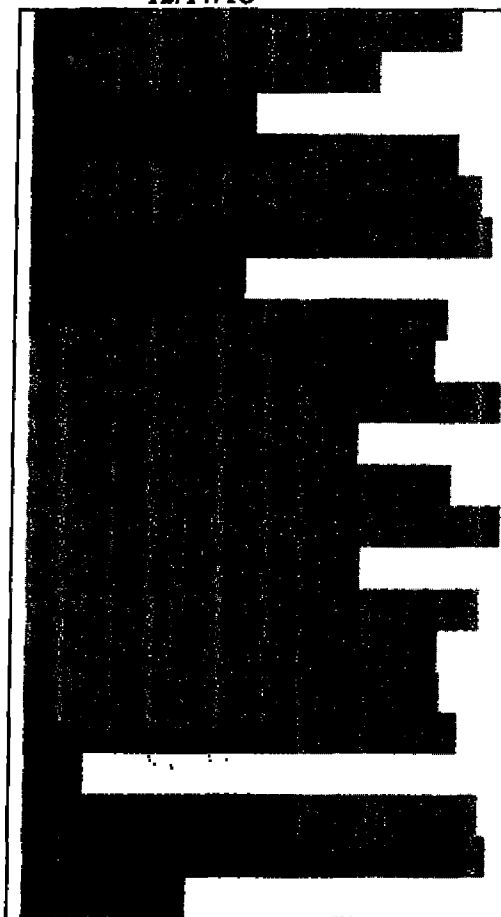
<p>time period shall be deemed a denial of the appeal.</p> <p>(d) Appellate Decision. The Area Planning Commission may reverse or modify, in whole or in part, a decision of the Director. The Area Planning Commission shall make the same findings required to be made by the Director, supported by facts in the record, and indicate why the Director erred in determining a project's compliance with the applicable regulations of the specific plan.</p> <p>(e) Effective Date of Appellate Decision. The appellate decision of the Area Planning Commission shall be final and effective as provided in Charter Section 245.</p>		<p><i>Councils, HPOZ Boards, Design Boards, Neighborhood Associations, etc, and after affording the certified Neighborhood Councils and other interested parties the opportunity to have input into the decision as required by the charter.</i></p> <p><i>Any decision likely to involve public controversy or have applicability beyond an individual project shall be set for public hearing on notice.</i></p> <p><i>Any decision shall be transmitted within 3 business days for notice (refer back to notice parties) and shall be appealable by any aggrieved person to the CPC or the APC, as applicable.</i></p> <p><i>The initial director's interpretation on appeal may be expressly limited to the specific parcel or</i></p>
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<p><i>parcels that were the subject of the application, modified, reversed, affirmed, conditioned or annulled on appeal or otherwise sent back for further consideration and any decision on appeal may be [appealed to Council] or expressly limited to the specific parcel or parcels that were the subject of the application, modified, reversed, affirmed, conditioned or annulled by ordinance, resolution or order of Council or by other action of council under Section 245 of the Charter.</i></p>

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		<p>The new proposal does not say how (other than the posting on the website) anyone would get notice of an interpretation of the director for an appeal.</p>
<p>LAMC Sec 12.03 DIRECTOR OF PLANNING (DIRECTOR) and LAMC Sec 12.26.K. The chief administrative officer of the Department of City Planning shall be known as the Director of Planning . . . chosen on the basis of administrative and technical qualifications, with special reference to actual experience in and knowledge of accepted practice in the field of city planning. The Director shall 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. The Director may 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.</p>		
		

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ATTACHMENT G (SITE PLAN/PROJECT PERMIT COMPLIANCE and PROJECT REVIEW) LAMC 16.05 to Proposal Section 13.4.4 and 13.15

Substantive Changes Not Discussed in Staff Report or Disclosed in Outreach:

1. **Public hearing and Notice changed.** Projects of a certain size, scope or character (50,000 square foot net increase, 50 unit net increase, 17,500 sf SFR in HCR, increased average daily trips, and residential projects within the Greater Downtown Housing Incentive Area) that may have an effect on neighboring properties (and what project of that size definitely would not?):

REQUIRES a public hearing - "the Director shall set the matter for public hearing" which the Proposal changes to "the matter may be set for public hearing".

REQUIRES publication notice and notification to neighborhood associations and councils was removed.

2. **Deletion of 17 Specific Examples of Discretionary Approvals** (just enacted in 2017 – so AFTER JJJ passed). The deletion of "(k) density bonus greater than the minimums pursuant to Government Code Section 65915" is particularly disturbing since that section requires a public hearing for all TOC projects even though the Director and the Department have taken the position that all TOCs are "by right" and not discretionary actions.

3. **Removal of Requirement That Applicant Undertake to Remove Structures Found to be in violation of Height and Setback Requirements.** Enforcement language was diluted and eliminated in part, including the cross reference to Section 11.02 thereby removing height districts and building lines from the universe of risks that an applicant has to indemnify LA against in the event that changes in the law do not become effective (or are overturned). The new Section 13.2.9 is limited to "zone changes" for the undertaking and does not include the height and building line (e.g. setbacks, baseline, grade) risks in the development undertaking in current Section 11.02.

4. **Elimination of city environmental and surrounding area mitigation requirements and insertion of CEQA reviewed projects as exemptions from Project Review** are material changes in this (and in a number of other sections) of this Proposed Ordinance. The Proposal should not rely upon or incorporate state law in substitution for our Charter City standards.

Technical Errors:

Language of Definition of "Development Project" says "for the purpose of effectuating this section" which made sense when the definition was in the

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substantive section 16.05 but makes no sense when the definition is moved to a new section that has nothing but definitions and therefore effectuates nothing (new section 13.15)

Cross reference in "Alternative Thresholds" should be to sections 1-3 not 2-4.

Definition of Project Review is missing.

**Side By Side Apples to Apples Comparison
Site Plan Review Renamed Project Review (Staff Report Page 8)**

DELETED TEXT IN RED

Moved Text in Yellow Highlight

*** or * is a Footnote explaining a cross-reference**

New text in bold italics

Existing Code (Old)	Proposal (New)	Difference
SEC. 16.05.A SITE PLAN REVIEW. Purpose	SEC. 13.4.4 Project Review Preamble Purpose	Changes the words "traffic circulation" to "mobility". Why?
SEC. 16.05.B.: Definitions: . 1: Development Project. "for the purpose of effectuating this section."[Sec. 16.05"]	Sec. 13.15 Administration Definitions in alphabetical order – Development Project has identical language	Development Project definition in Sec. 13.15 applies only to "this section" so it applies to nothing in the old or new code except to the extent used in other definitions in the new Sec. 13.15. <i>Intended?</i>
SEC. 16.05.B.2.: Discretionary Approval. (Amended by Ord. No. 184,827, Eff. 3/24/17.) An approval initiated by application of a property owner or representative related to the use of land including, but not limited to a: <ul style="list-style-type: none"> (a) zone change; (b) height district change; (c) supplemental use district; (d) conditional use approval; (e) use, area or height variance; (f) parcel map; (g) tentative tract map; (h) coastal development permit; (i) development agreement; (j) adjustments; (k) density bonus greater than the minimums pursuant to Government Code Section 65915; (l) density transfer plan; (m) exception from a geographically specific plan; 	Sec. 13.15 Administration Definitions in alphabetical order – Discretionary Approval. An approval initiated by application filed by a property owner or <i>applicant</i> related to the use <i>or development</i> of land, <i>where the City retains the ability to require changes or attached conditions in response to concerns identified at a public hearing, in an environmental impact report, or in other studies or documentation relating to the project.</i>	Do the deletions/new text result in a loss of public hearing rights for any of the categories deleted from the definition "discretionary approval"? What is the effect of deleting (k) on the argument that even TOC projects are discretionary and therefore require a public hearing/appeal rights?

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(u) project permit pursuant to a moratorium or interim control ordinance;
(o) public benefit projects; or
(p) floor area deviation of less than 50,000 square feet pursuant to 14.5.7 of Article 4.5 of the Los Angeles Municipal Code.

(q) single-family dwelling with a cumulative Residential Floor Area of 17,500 square feet or larger within the HCR District pursuant to 13.20 of Article 3 of the LAMC.

SEC. 16.05.B.3. Fast-food Establishment.
[Definition Intentionally Omitted as no difference]

SEC. 16.05.C. Requirements.

1. Site Plan Review. (Amended by Ord. No. 184,827, Eff. 3/24/17.) No grading permit, foundation permit, building permit, or use of land permit shall be issued for any of the following development projects unless a site plan approval has first been obtained pursuant to this section. This provision shall apply to individual projects for which permits are sought and also to the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot, as determined by the Director.

(a) Any development project which creates, or results in an increase of, 50,000 gross square feet or more of nonresidential floor area.

(b) Any development project which creates, or results in an increase of, 50 or more dwelling units or guest rooms, or combination thereof.

(c) Any change of use to a Drive-Through Fast-food Establishment or any change of use to a Fast-food Establishment, either of which results in a net increase of 500 or more average daily trips as determined by, and using the trip generation factors promulgated by the Department of Transportation.

(d) Any change of use other than to a Drive-Through Fast-food Establishment or to a

Sec. 13.15 Administration Definitions in alphabetical order

A. Applicability

1. Projects Subject to Project Review. *The Project Review process applies to any use or activity that requires a Project Review in this Code, including but not limited to:*

a. Any development project which creates, or results in an increase of 50,000 gross square feet or more of nonresidential floor area.

b. Any development project which creates, or results in an increase of, any combination of at least 50 or more dwelling units or guest rooms.

c. Any change of use to a Drive-Through Fast-food Establishment or any change of use to a Fast-food Establishment, either of which results in a net increase of 500 or more average daily trips as determined by, and using the trip generation factors promulgated by the Department of Transportation.

d. Any change of use other than to a Drive-Through Fast-food Establishment or to a Fast-food Establishment which results in a net increase of 1,000 or more average daily trips as determined by, and using the trip generation factors promulgated by the Department of Transportation.

e. Any residential (including Apartment Hotel or mixed-use, but

No difference in definition

Why is there no definition of Project Review?

The permit prohibition in G below is not the same thing both because the language was changed from "use of land permit" to "certificate of occupancy" and because Section 13.2.9 dropped the risk for the applicant. Section 11.02 specifically covers height districts and building lines, as well as zone changes, in the undertaking required for construction to proceed. New Section 13.2.9 drops height and lines (so setbacks).

The language in yellow highlight in existing subsection 1 was just moved to create a new subsection 2 in place

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Fast-food Establishment which results in a net increase of 1,000 or more average daily trips as determined by, and using the trip generation factors promulgated by the Department of Transportation.

(e) Any residential (including Apartment Hotel or mixed-use) building located within the Greater Downtown Housing Incentive Area.

(f) Any single-family residential development with a cumulative Residential Floor Area of 17,500 square feet or larger located in the HCR District.

This subdivision shall not apply to one-family dwellings located outside of a HCR District.

2. **Enforcement.** No grading permit, foundation permit, building permit, or certificate of occupancy shall be issued for a development project approved under this site plan review process unless the project meets all requirements and conditions of the site plan approval. Permits issued in error shall be treated as specified in Section 11.02 of this Code. If the development project approval authorized by this section is utilized, the conditions of that approval become effective immediately. The violation of any such condition shall constitute a violation of this chapter and shall be subject to the same penalties as any other violation of this Code.

excluding one-family dwellings) building located within the Greater Downtown Housing Incentive Area.

f. Any single-family residential development with a cumulative Residential Floor Area of 17,500 square feet or larger located in the HCR District.

2. This Section applies to individual projects for which permits are sought and also to the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot, as determined by the Director.

G. Scope of Decision

1. See Sec. 13.2.7.

2. No grading permit, foundation permit, building permit, or certificate of occupancy shall be issued for a development project approved under this section unless the project meets all requirements and conditions of the Project Review.

3. If the development project approval authorized by this Section is used (*see Sec. 13.2.7*), the conditions of that approval become effective immediately.

of the deleted enforcement paragraph below.

Exclusion of single family in parenthesis in (e) of Proposal is consistent with yellow highlighted single family exclusion so more like a move than a change.

The cross-reference in G. is unclear whether it is to 13.2.7. A., B. or F.

The deletion of Enforcement Language in old subsection 2 (although some of it is moved to new section 13.4.G.2 and 3 as shown here and to new Sec 13.2.9.) is a material and substantive change. Section 11.02 that not only voids noncompliant permits, but requires an undertaking from a builder to remove all structures that were built if a new zone change, height district or building line adjustment is not effective. The new provisions eliminate height and building lines. Also technical glitch in of a missed cross-reference in

D. Exemptions.

1. Unless made discretionary by any other provision of law, the approval of any building permit for a development project which does not exceed the thresholds set forth in this subsection and Section 12.24U14* is ministerial and exempt from the requirements of the California Environmental Quality Act.

2. Any development project with a still-valid discretionary approval, including but not limited to those listed in Subsection B.2. of this section, shall be exempt from site plan review only if the applicable decision-making body determines in writing that the prior discretionary approval, and the required environmental review, considered significant aspects of the approved project's design (such as, but not limited to, building location, height, density, use, parking, access) and that the existing environmental documentation under the California Environmental Quality Act is adequate for the issuance of the present permit in light of the conditions specified in Section 21166 of the California Public Resources Code. The Department of City Planning may require supplements to the environmental documentation to maintain its currentness. The Director is authorized to establish procedures to process determinations required under this subdivision.

3. Any development project located within the boundaries of an adopted redevelopment project area shall be exempt from site plan review when:

(a) The Community Redevelopment

3. Exemptions

The following projects are exempt from a Project Review:

a. Unless made discretionary by any other provision of law, the approval of any building permit for a development project *unless the thresholds set forth in Subsection A. 1 above are exceeded* (these are ministerial and exempt from environmental review).

b. Any project that already requires a discretionary or quasi-judicial review of environmental documentation under CEQA (including Zone Changes, Conditional Use Permits, and Tentative Subdivision Maps). Reference: Cal. Pub. Resources Code Sec. 21080(a).

c. Any project subject to a Categorical Exemption from CEQA pursuant to California Public Resources Code Sec. 21084. Reference: 14 Cal. Code Reg. Sec. 15300- 15332.

d. Any development project with a still-valid discretionary approval only if the applicable decision-making body determines in writing that:

i. The prior discretionary approval, and the required environmental review, considered significant aspects of the approved project's design (such as, but not limited to, building location, height, density, use, parking, access); and

ii. The existing environmental documentation under CEQA is adequate to issue the present permit in light of the conditions specified in Sec. 21166 of the California Public

New section 13.4.A.4
[see Alternative
Thresholds below
(old section 16.05H)]

The deletion and *change in language in old Exemption D1 to new 3.a is confusing* and could result in material and substantive changes. *12.24U14 is "Major Developments"

Please explain new exemptions adding b. and c.

Addition of the word

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Agency of the City of Los Angeles (CRA) and the City Council have approved an owner participation agreement, a disposition and development agreement, a loan agreement, a cooperation agreement or other discretionary agreement for the development project; and

(b) The project has been considered during a public hearing conducted in accordance with the CRA's adopted policies and procedures for public hearings.

(c) The residential (including Apartment Hotel or mixed-use) building is within the Greater Downtown Housing Incentive Area and has been determined by the Community Redevelopment Agency (CRA) to comply with the Urban Design Standards and Guidelines, prepared by the CRA and approved by the City Planning Commission when the City Planning Commission finds that the guidelines are consistent with the applicable community plans.

Prior to the issuance of any building permit, the CRA shall certify to the Director and the Department of Building and Safety that the required notification, hearing and agreement have been completed.

4. Any development project within a specific plan area for which an EIR was certified by the City Council not more than six years prior to the date of the present application for a building permit. The date of the application shall be the date on which architectural and structural plans sufficient for a complete plan check are accepted by the Department of Building and Safety. This exemption shall be applicable only if the Director determines in writing that the EIR considered significant aspects of the approved project's design (such as, but not limited to, building location, height, density, use, parking, access) and that it is adequate for the issuance of the present permit. The Director is hereby authorized to establish procedures to process determinations.

5. Any development project on a motion

Resources Code. The Department of City Planning may require supplements to the environmental documentation to ensure that the information is current. The Director may establish procedures to process determinations required under this subdivision.

e. Any development project located within the boundaries of an adopted redevelopment project area if:

i. The former Community Redevelopment Agency of the City of Los Angeles (CRA) and the City Council approved an owner participation agreement, a disposition and development agreement, a loan agreement, a cooperation agreement or other discretionary agreement for the development project;

ii. The project was considered during a public hearing conducted in accordance with the CRA's adopted policies and procedures for public hearings;

iii. The residential (including Apartment Hotel or mixed-use) building is within the Greater Downtown Housing Incentive Area and was determined by the CRA to comply with the Urban Design Standards and Guidelines, prepared by the CRA and approved by the City Planning Commission when the City Planning Commission finds that the guidelines are consistent with the applicable community plans; or

iv. Prior to the issuance of any building permit, the CRA shall certify to the Director and the Department of Building and Safety that the required notification, hearing and agreement are complete.

f. Any development project within a specific plan area for which an EIR was certified by the City Council

former is conforming.

Change from (a) and (b) plus (c) and (d) to any of (i), (ii), (iii), or (iv) could be a material change. Please explain.

Changes in old #4 to new #f are wordsmithing and do not appear to be material.

New section g. - Please explain. And cross reference to Sec 13.1.1 is clearly a wrong cross-reference since that is City

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picture and/or television production lot that is industrially or commercially zoned and is enclosed by a minimum six foot high wall or other barrier (such as building walls, fences, topographical barrier, etc.) which separates the facility and the development from adjacent properties. However, all new office uses shall be directly related to motion picture and/or television production and shall not be rented or leased to other entities not directly related to motion picture and/or television production uses.

6. Adaptive Reuse Projects in the Downtown Project Area pursuant to Section 12.22 A.26.

7. Any residential (including Apartment Hotel or mixed use) building located within the Greater Downtown Housing Incentive Area that is subject to Section 12.22 A.30. of this Code.

8. A Qualified Permanent Supportive Housing Project as defined in Section 14.00 A.11.(a)(1) of this Code and containing no more than 120 units, or no more than 200 units if it is located either in the Greater Downtown Housing Incentive Area or on a lot with a general plan land use designation of Regional Center Commercial, Regional Commercial, or Regional Mixed Commercial.

within 6 years before the date of the present application for a building permit. The date of the application is the date on which architectural and structural plans sufficient for a complete plan check are accepted by the Department of Building and Safety. This exemption applies only if the Director determines in writing that the EIR considered significant aspects of the approved project's design (such as, but not limited to, building location, height, density, use, parking, access) and that it is adequate for the issuance of the present permit. The Director may establish procedures to process determinations.

g. Projects in those Specific Plan areas where similar project site planning regulations are established by the Specific Plan and significant project environmental impacts, if any, are mitigated by the measures imposed in the Project Compliance process, as determined by the Director (see Sec. 13.1.1 and Sec. 13.6.3 for Project Compliance workflows).

h. Any development project on a motion picture and/or television production lot that is industrially or commercially zoned and is enclosed by a minimum 6 foot high wall or other barrier (such as building walls, fences, topographical barrier, etc.) which separates the facility and the development from adjacent properties. However, all new office uses shall be directly related to motion picture and/or television production and shall not be rented or leased to other entities not directly related to motion picture and/or television production uses.

i. Adaptive Reuse Projects in the

Council. Did you mean 13.11 (HPOZ)?

Wordsmithing.

Conforming.

Conforming.

Was section 8 moved to ZA and is that why deleted here?

E. Directors Authority.

1. The Director or his/her designee shall have the authority to approve, conditionally approve, or deny site plan approval for development projects specified in Section 16.05 C. above in accordance with the purpose and provisions of this section.

2. In granting site plan approval, the Director may condition and/or modify the project, or select an alternative project, as he or she deems necessary to implement the general or specific plan and to mitigate significant adverse effects of the development project on the environment and surrounding areas.

3. The Director is authorized to designate one or more members of the professional staff of the Department of City Planning to perform any of the Director's duties under this section. The Director shall establish administrative methods, guidelines, procedures, and forms as may be necessary to conduct the review and render a decision expeditiously, prior to processing any site plan review application.

4. The Director shall not approve or conditionally approve a site plan review for a development project unless an appropriate environmental review clearance has been prepared in accordance with the requirements of CEQA.

F. In granting an approval, the Director, or the Area Planning Commission on appeal, shall find:

1. that the project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable

Downtown Project Area pursuant to Sec. 12.22 A.26 of Chapter 1. Any residential (including Apartment Hotel or mixed use) building located within the Greater Downtown Housing Incentive Area that is subject to Sec. 12.22 A.30 of Chapter 1.

D. Decision

1. Decision Maker

The Director is the initial decision maker and may approve, conditionally approve, or deny the Project Review.

* * *

5. Conditions

a. The Director may condition and/or modify the project, or select an alternative project, as necessary to:

i. Implement the General or a specific plan; and

ii. Address potential effects of the development project on surrounding areas. The Director shall not approve or conditionally approve a Project Review without appropriate environmental review.

Deletion of need to mitigate environmental impact generally is a material change

E. Standards for review and required Findings

In granting an approval, the Director, or the Area Planning Commission on appeal, shall find that:

1. The project *substantially conforms* to the purposes, intent and provisions

Wordsmithing

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specific plan;

2. that the project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties; and

3. that any residential project provides recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties.

G. Procedure.

1. Site Plan Review Application.

Application for the site plan review shall be filed in any public office of the Department of City Planning, upon such forms and accompanied by applicable fees, a site plan drawn to scale, and other information prescribed by the Director for that purpose. The application shall be verified by either the property owner, lessee, owner in escrow, or a legally authorized agent.

2. Environmental Review. As part of the application for site plan review, the applicant shall file necessary forms and information for environmental review as prescribed by the Director. The Director, or his/her designee, shall cause to be prepared, concurrently with the review and approval of the site plan, the required environmental studies and notices for the project.

3. Notice – Hearing – Time Limits.

a. The Director shall refer all completed applications for site plan review to affected City departments for their review and report. For projects in adopted redevelopment project areas, the

of the General Plan, applicable community plan, and any applicable specific plan;

2. The project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be *substantially* compatible with existing and future development on adjacent properties and neighboring properties; and

3. Any residential project provides recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties.

B. Initiation

1. Application. A property owner files an application for a Project Review with the Department.

2. Environmental review

a. As part of the application for a Project Review, the applicant shall file necessary forms and information for environmental review as prescribed by the Director.

b. The Director shall cause the required environmental studies and notices for the project to be prepared concurrent with the Project Review.

D.

2. Referral

a. If applicable, the Director shall refer all completed applications for the Project Review to affected City departments for their review and report.

By building in "substantially" into #2, this changes finding required to add Director discretion.
MATERIAL CHANGE

Requirements of Verification, plans etc. no longer in Code

Filing is by Property Owner, no longer lessee or escrow.

MATERIAL AND SUBSTANTIVE CHANGE:
Public Hearing Language changed from mandatory

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completed applications shall be sent to the Administrator of the CRA for review and report as to conformity with the adopted Redevelopment Plan applicable to the project. Responses shall be returned within fifteen (15) days after receipt, or such other period agreed to by the Director and the affected agency or department.

b. If the Director finds that the matter may have a significant effect on neighboring properties, the Director shall set the matter for public hearing. If the application is set for public hearing, written notice of the hearing shall be sent by First Class Mail at least 15 days prior to the hearing to the applicant, owners and tenants of the property involved, owners and tenants of all property within 100 feet of the boundary of the subject site, the City Councilmembers representing the area in which the property is located, the Administrator of the CRA for projects within an adopted redevelopment project area, and any organization representing property owners or the community in the project vicinity if they request in writing to be notified. Notice shall also be given by at least one publication in a newspaper of general circulation in the City, designated for that purpose by the City Clerk, not less than 15 days prior to the date of the hearing.

c. The Director shall grant, conditionally grant or deny site plan approval within sixty (60) days after:

- (1) the date of filing of an application, or
- (2) where an EIR is required, the date the EIR is certified as complete.

This time limit may be extended up to forty-five (45) days by mutual consent of the applicant and the Director. The time limit shall also be extended if necessary to prepare and process an EIR, as provided in Section 12.25A of this Code.

d. The Director shall send notice of the

b. If applicable, responses shall be returned within 15 days after receipt, or another period agreed to by the Director and the affected agency or department.

3. Public Hearing

If the Director finds that the matter may have a significant effect on neighboring properties, *the matter may be set for public hearing.*

C. Notice of Public Hearing

The following notice is required for the public hearing on the initial decision, if held, and the hearing on appeal:

TABLE WITH

27 Days Mailed Notice to:

Applicant

Owners or Tenants of Property

Involved

Owners or Tenants within 300 feet of boundary

Council Members(s) representing area for Property

Interested Parties who have filed written request for Notice

10 Days Posted Notice on Property

4. Decision

a. The Director shall approve, conditionally approve or deny the Project Review within 75 days after the date an application is deemed complete, including environmental

Director's duty "the Director shall set the matter for public hearing" to passive and discretionary "the matter may be set for public hearing". This takes the failure to hold a public hearing outside of the consequences of a permit issued in error under new Section 13.2.9.

Deletion of CRA is conforming.

Publication notice deleted entirely.

References to neighborhood associations, councils or representatives (who could file standing requests for area) deleted.

Date changes consistent with Staff Report.

While language is different, old #5 and new #4.c appear to be substantially similar.

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determination to the applicant and the interested parties listed in Section 16.05G3(b) of the determination by First Class Mail. Failure to receive notice shall not invalidate any action taken pursuant to this section.

4. Determination Effective – Appeal. The determination of the Director shall become final after an elapsed period of fifteen (15) days from the date of mailing of the determination to the applicant, unless a written appeal is filed within such period as provided in Subsection 16.05H. The Director shall notify the Department of Building and Safety of the final approval of site plan review.

5. Failure to Act - Transfer of Jurisdiction. If the Director fails to make a decision on an application within the time limit specified in this subsection, the applicant may file a request for transfer of jurisdiction to the Area Planning Commission, in which case the Director shall lose jurisdiction. The Area Planning Commission shall consider the matter following the same procedures and limitations as are applicable to the Director. A request for transfer of jurisdiction may be filed in any public office of the Department of City Planning.

H. Appeals.

1. Authority. The Area Planning Commission of the area in which the property is located shall have the authority to decide appeals from site plan review decisions made by the Director. Prior to deciding an appeal, the Area Planning Commission shall hold a hearing or direct a hearing officer to do so.

2. Filing an Appeal. The applicant, any officer, board, department, or bureau of the City, or any interested person aggrieved by the decision of the Director may file an appeal to the Area Planning Commission. Appeals shall be in writing and shall set forth specifically the reasons why the decision should not be upheld. Appeals shall be filed in any public office of the Department of City Planning, upon required

review.

b. This time limit may be extended up to 45 days by mutual consent of the applicant and the Director. The time limit shall also be extended if necessary to prepare and process an EIR.

c. If the Director fails to make a decision on an application within the time limit specified in this subsection, the applicant may file a request for transfer of jurisdiction to the Area Planning Commission pursuant to Sec. 13.2.6.

6. Transmittal

a. The Director shall send notice of the determination to the applicant and the interested parties listed in Subsection C.

b. Failure to receive notice does not invalidate any action taken pursuant to this Section.

c. The Director shall notify the Department of Building and Safety of the final approval of the Project Review.

F. Appeals

1. Decision Maker

The Area Planning Commission of the area in which the property is located is the appellate decision maker.

2. Filing

The applicant, any officer, board, department, or bureau of the City, or any interested person aggrieved by the decision of the Director may file an appeal to the Area Planning Commission.

3. Appellate Decision

a. Before acting on any appeal, the Area Planning Commission shall set the matter for hearing, giving notice in the manner specified in Subsection C.

b. The Area Planning Commission shall hold

Old 3(d) and New 6:
Notice after the fact
has same issue in
excising neighborhood
associations.

There seems to be
a difference in
whether the
timely filing of an
appeal stays the
decision of the
Director but I
cannot tell.
Please explain
how this works.

Notice has same
neighborhood
association/council
issue as above.

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forms and accompanied by applicable fees, within 15 days of the mailing of the decision to the applicant. An appeal not properly or timely filed shall not be accepted.

3. **Hearing Notice.** Upon receipt of the appeal application, the Area Planning Commission Secretary shall set the matter for a public hearing to be held within 75 days of the filing of the appeal. The Secretary shall give notice of the hearing to the appellant and to all the other parties specified in Subsection G.3.(b) above, within the time and in the manner specified in that subsection.

4. **Decision.** The Area Planning Commission shall render its decision in writing within 15 days after completion of the hearing. The Area Planning Commission may sustain or reverse any decision of the Director, and may establish additional conditions to conform with the findings required in Subsection F. The decision shall be in writing and based upon evidence in the record, including testimony and documents produced at the hearing before the Area Planning Commission, and supported by additional findings as may be required by Section 16.05 F. above. If the Area Planning Commission fails to act within the time specified, the action of the Director shall be final.

5. **Notice.** The Secretary shall notify the Department of Building and Safety of final appeal decisions.

1. **Alternative Thresholds.** A different threshold from that indicated in Section 16.05 C. of this Code may be established within a Community Plan or Specific Plan, or portion thereof, when specifically stated in the plan text and only when the plan area contains one or more of the following:

1. A transportation impacted area;
2. An environmentally sensitive area;
3. An historically sensitive area; or
4. Any other area of special significance which is clearly identified as to its significance and the need for a different threshold level.

the public hearing within 75 days of the filing of the appeal.

c. The Area Planning Commission shall render its decision in writing within 15 days after the hearing is completed.

d. The Area Planning Commission may sustain or reverse any decision of the Director, and may establish additional conditions to conform to the findings required in Subsection E.

e. The decision shall be in writing and based upon evidence in the record, including testimony and documents produced at the hearing before the Area Planning Commission, and supported by any additional findings required by Subsection E above.

4. **Alternative thresholds**

A Community Plan or specific plan may establish a Project Review exemption or different threshold from that indicated in Paragraphs 2-4 above when specifically stated in the plan text and only when the plan area contains at least one of the following:

- a. A transportation impacted area;
- b. An environmentally sensitive area;
- c. An historically sensitive area; or
- d. Any other area of special significance which is clearly identified as to its significance and the need for a different threshold level.

The new section does not work because the cross-reference are wrong (should be 1-3) and because the Old Code section 16.05 C includes the threshold levels for permit issuance whereas the new Proposal moves that section out so the cross reference no longer works.