

Hydee R. Feldstein
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November 28, 2018

Office of The Clerk of the City of Los Angeles
City Hall, Room 260
200 N. Spring Street
Los Angeles, CA 90012

**Re: OPPOSITION TO Zoning Code/Los Angeles Municipal Code (LAMC)/
Reorganization of Administrative Provisions/Amendment Council File 12-0460-S4;
Case No. CPC-2016-3182-CA; ENV-2016-3183-CE – ("Proposal")**

PLEASE PLACE THIS IN THE RECORD OF THIS FILE

OVERVIEW: There are four overarching reasons why the Proposal requires a fundamental redrafting and a return to the Department of City Planning (DCP) for corrective action.

1. First, the DCP has mislead and tried to push this through as a "nothing to see" no big deal proposal when in fact there is a lot to see and 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.

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

a. **A Shrunken Council:** The proposal only refers to one of the Charter powers of Council and does not include Councils 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. A Mighty (or Mightier) 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. That structure where the Mayoral input is made directly to Council and **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. Oz the Great and Powerful 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 changes in procedure -- shortening already impossibly short notice periods, disenfranchising 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.

SPECIFICS

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 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.

In preparing this opposition, undersigned became aware that DCP made a "same day" submission to CPC at the CPC Hearing which was not discussed or explained in the presentation but which consisted of a table of contents for the new Zoning Code now included with the submission to PLUM. According to the Table of Contents, the Proposal is proposed to be inserted as "Article 13" rather than "Division 13" which may or may not be material but is yet another opaque change in the flawed process.

This submission process is just the latest example in a pattern of prior misleading outreach and errors.

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.

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.

***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

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.

A list of the sections of the City Charter and the LAAC that need to be incorporated into Council's General Authority in the Proposal are attached as part of Attachment B.

***Example 2 – The Proposal (Division 13.1.1.D.) impermissibly limits Council's "Specific Authority" to, for example,**

(a) **"adopt or amend"** the General Plan, a Specific Plan, the Zoning Code, or a Zone Change,

(b) **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,

(c) **accept** Final Maps and Final Parcel Maps and dedications pursuant to a final map or final parcel map;

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 C.**

***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. This Proposal could specifically allow the State to dictate that allocation or delegation and thus this, and **all references to delegation, authority or limitation by reference to general "State law" must be deleted.**

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 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 D.

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 and 13.4.5 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.

Under existing law (LAMC Section 14.5.7), the Director has "limited" authority and "initial decision making authority" subject to notice, appeal and public hearing before an Area Planning Commission., for Projects that have a net increase of "less than 50,000 square feet floor area". Under LAMC Section 14.5.6, projects with an increase of "**more than 50,000 square feet of floor area" fall outside the Director's authority entirely.** The Director can make a recommendation but cannot even make "initial" decision. For these, the City Planning Commission must provide notice and hold a public hearing and disapproval is subject to appeal to Council.

D. Omission and Curtailment of Due Process and Charter Rights of Neighborhood Councils, Residents, and other Interested Parties.

The Proposal openly states 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. The Proposal:

- *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:

(i) What Planning Said: The Staff Report presented to the CPC and to PLUM states in pertinent part "the subject ordinance does not propose to make any changes to current notification requirements as they relate to the certified Neighborhood Councils."

(ii) What Existing Law Provides:

Charter section 907 specifically requires an "early warning system" to NCs as soon as practicable for notice to and input from NCs

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): Transmittal of Written Decision. Within three business days of making a decision, **the Director shall transmit a copy by First Class Mail to the applicant and to all owners of properties abutting, across the street or alley from, or having a common corner with the subject property, and to the local Certified Neighborhood Council.**

(iii) What the Proposal Does: Omits and deletes any reference to NCs.

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 are difficult to track and I am not yet certain of what changes have been made.

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, dissembling and flaws, 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 be required to provide a definitive draft of this and any other proposals, with a transparent "apples to apples" comparison between the two differently dated drafts of this Proposal and with a similar "apples to apples" comparison to the existing provisions of the LAMC. 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

Email cc:

Council President Herb Wesson and Staff;
Members of City Council and Staff;
Mayor Eric Garcetti and Staff;
Director of Planning Vince Bertoni and Staff;
City Attorney Mike Feuer and Staff.

**ATTACHMENT A (Examples of Preambles in Existing Codes and of Proposed
Comparable Provisions for this Proposal)
To Letter From Hydee R. Feldstein re: CF-12-0460-S4**

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 . . .

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 (Charter and LACC Powers NOT in Proposal)
Letter From Hydee R. Feldstein re: CF-12-0460-S4**

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 C (Delegation or Reassignment of Charter Powers)
Letter From Hydee R. Feldstein re: CF-12-0460-S4**

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).

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 D (Director of Planning Powers Under Existing Law)
Letter From Hydee R. Feldstein re: CF-12-0460-S4

*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.

CF 12-0460-S4 - Opposition to proposed Policies and Procedures

Jay Ross <ross_jay@hotmail.com>

Nov 28, 2018 12:05 AM

Posted in group: **Clerk-PLUM-Committee**

To the Clerk:

I agree with many of the comments from other residents and oppose this ordinance.

The Ordinances proposed that the City Charter be amended, but this can only be done by a super-majority vote of the citizens in an election.

A Council Ordinance like this cannot legally make these changes, which it does to Sect. 1A of the LAMC, according to lawyers and retired LA City planners who have reviewed the proposed Ordinance.

These are my concerns:

1. Too much decision-making power will be transferred from the elected Councilors and the PLUM committee, and given to the Director of Planning and the Mayor.
2. Neighborhood Councils will lose their ability to comment in a reasonable time because of shortened comment periods.
3. It will be more difficult for citizens to appeal, the appeal timelines will be shortened, and the number of people who can appeal will be reduced. The types of appeals and ground for appeal will be reduced.
4. Notification of discretionary entitlements will be decreased to the public, i.e. a smaller radius.
5. Affordable units should not be double counted for replacement housing, and for new affordable housing units.
6. The mayor should not be given the power to unilaterally approve zone changes. That is a task legislated to the Council.

Thank you,

Jay Ross
West LA 90064

1. Director Power Grab #1 (Sections 13.4.4 and 13.4.5):

The Director decide, **in a back room and without ANY prior notice to ANYONE**, whether to grant, conditionally grant or deny and whether to hold a public hearing of:

*Projects 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"

*Change of use to fast food restaurant whether or not they result in net **increase of 500 or 1,000 or more daily trips**

***Residential use in Downtown irrespective of size or mixed use**

***Single Family residences with more or less than 17,500 square feet of floor area.**

Current Law:

(LAMC Section 14.5.7):

Increase "less than 50,000 square feet floor area": Director Authority has "limited" and "initial decision making authority" subject to notice, appeal and public hearing before an Area Planning Commission.

(LAMC Section 14.5.6): Increase of "more than 50,000 square feet of floor area": Director can recommend but cannot even make "initial" decision – City Planning Commission must provide notice and hold hearing and disapproval is subject to appeal to Council.

2. Director Power Grab #2 (Sections 13.1.6 and 13.1.9):

*** 30 categories of "Specific Authority" delegated 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 without appeal or with limited appeal to the Area Planning Commission or the City Planning Commission.

*the categories include not only the items in # above but also land use legislative authority such as "Specific Plan Interpretations" and "Alternative Compliance" providing all kinds of discretion without notice, public hearing or appeal

Current Law: All director decisions and determinations, other than projects proposed in compliance with existing laws that may be decided by the director, are "initial" decisions for the City that do not become final until after notice and right to appeal.

3. Neighborhood Councils: NOT in the proposed ordinance at all
The ONLY councils, boards, commissions or agencies involved under current law that are NOT included in the new Ordinance are the Neighborhood Councils and need to be.

Existing Laws:

Charter Sec. 907. Early Warning System. for "receiving input from neighborhood councils prior to decisions" and "notice to neighborhood councils as soon as practical, and a reasonable opportunity to provide input before decisions"

Charter Sec. 908. Powers of Neighborhood Councils." 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."

Current law also REQUIRES mailed notices to Neighborhood Councils and residents (including across the street, common corners, HPOZ Boards, and interested parties who have filed requests EVEN FROM DIRECTOR DECISIONS. These and other notice Sections are deleted and need to be added back in. The staff report to the contrary is clearly erroneous and the outreach to date has been completely misleading and a violation of due process.

LAMC Section 11.5.7.C.(4)(b): **"Upon making a written decision, the Director shall transmit a copy."**

LAMC Section 12.22.A.25(g)(2)(i)(d): **"Within three business days of making a decision, the Director shall transmit a copy. "**

LAMC Section 14.5.7.A.(4) **"Within three business days of making a decision, the Director shall transmit a copy."**

The current timeframe for an appeal from the Director's decisions is 24 days.

4. MAYOR v. COUNCIL Power: Under the current law, the Mayor has NO authority over zoning or land use other than to veto any ordinance subject to Council's override. Under Section 13.1.2 of the Proposed Ordinance, **the Mayor acquires "Specific Authority" over**

a. A Specific Plan;

b. The Zoning Code or a Zoning Code amendment; and

c. A Zone Change (including Supplemental Use Districts).

3. Exercise any other authority delegated by the Municipal Code, City Charter, or State law.

Current Law limits Mayor to management and enforcement functions of his office. Section 230 of the Charter: "management authority shall be vested in the Mayor . . . who shall execute and up-hold all laws and ordinances of the City." City Charter section 231 allows the Mayor to do things like "exercise management authority", "appoint and remove staff", and "publicly address council" but does not anywhere give the Mayor authority over Planning or Zoning.

Even where the Zoning Code refers to the Mayor, it carefully preserves structure of Mayoral veto **with** the right of Council to override. Example: LAMC

14.5.6.B(4)(f) **(Council may override Mayoral disapproval by 2/3rds vote – need to add to proposed ordinance)**

Current law gives Council control over legislation under Charter section 240 and also power under Charter section 240 but Council:

Charter 245(a): can overrule any appointed officials from any Board or Commissioner on Planning and Zoning matters

Charter Section 245(e): pull planning matters, and

Section 250(c): Council can always OVERRIDE THE MAYOR.

The proposed ordinance **only** references Section 240 of the Charter: **Must be amended to add Sections 245-250 of the Charter.**

5. STACKING (affordable units can count as BOTH replacement units under the state laws (such as the Ellis Act or density bonuses AND the same unit will count as an affordable unit under the TOC Guidelines)- This Ordinance is a complete 180 degree turn from existing law permitting hyperdevelopment by allowing developers to mix and match bonus upon bonus upon incentive under different State and City laws.

Current law: LAMC Section 11.5.11: "All Projects qualifying for development bonuses pursuant to this Section **shall be required to meet** any applicable replacement requirements of [State law]. A Developer seeking and receiving a density or development bonus under the provisions of . . .any other State or local program that provides development bonuses **shall not be eligible for the development bonuses pursuant to this Section.** For purposes of this provision, development bonuses shall include discretionary General Plan amendments, zone changes, and height district changes."

New Section 13.3.1. E.4. of the Proposed Ordinance then turns that "no stacking" concept on its head by stating that:

"In addition to the requested General Plan amendments, zone changes and/or height district changes, a Project that provides affordable housing consistent with this Section **shall also be entitled to** three incentives or concessions specified in [other state and local bonus programs." That literally turns substantive law on its head.

6. UPZONING WITHOUT AFFORDABLE HOUSING: long time objective of developers -- a renewed ability to build McMansions or luxury housing without having to provide affordable housing.

First, Director Project Review now includes single family residences (including upwards of 17,500 square feet.

LAMC Section 12.21.C(10) (part of the Hillside Ordinance) limits certain development unless otherwise permitted under LAMC Section 12.24.F (just amended in February 2018) that limits bonuses and incentives providing specified affordable housing.

Revised LAMC 12.21.C(10) does NOT refer to 12.24.F., instead referring to new Sections 13.4.3.E(3)(a) and 13.4.3.E(3)(a), neither of which contain ANY reference to affordable housing requirements.

7. PARKING: Director acquires new ability to reduce parking by 20% below the minimal amounts already required without any affordable housing component.

LAMC Section 12.24.P. reserves that ability to Council in land use legislation.

LAMC section 12.24.S) permits it as part of the Conditional Use Permit Process which today is limited to those who have to provide notices and hold a hearing -- Zoning Administrators, the City Planning Commission, Area Planning Commissions or Council -- but NOT the Director of Planning to reduce the parking requirements as part of the CUP process

The Proposed Ordinance now gives the Director of Planning the power to reduce otherwise required parking by an additional 20% either as part of the legislative ordinance process or as part of the CUP process.