

February 23, 2015

**VIA ELECTRONIC MAIL**

Planning and Land Use Management Committee  
City of Los Angeles  
200 N. Main Street  
Los Angeles, CA 90012

**Re: Neighborhood Conservation Interim Control Ordinance  
Council File No. 14-0656**

Dear Honorable Members of the Planning and Land Use Management Committee:

This letter is written on behalf of Michael Klein to express his deep concerns with the so-called Neighborhood Conservation Interim Control Ordinance (“ICO”), which proposes immediate restrictions on the issuance of building permits for single-family dwelling units in 15 identified neighborhoods referred to as the “Project Area.”

The ICO as currently drafted is unnecessary and ill-advised, and should be rejected for the following reasons:

- There is no “current and immediate threat” to public health, safety, or welfare to warrant passage of this expansive and impactful measure without providing adequate notice to the public and without obtaining meaningful public input and participation. This is particularly true given that thousands of homeowners within the Project Area remain completely unaware that the ICO would drastically reduce their property rights, eliminate their ability to improve their homes to fit their current needs, and reduce property values across the Project Area by millions of dollars.
- The City does not, and cannot, offer any evidence to support the allegation that the City is suffering from a “proliferation of hulking box-like structures,” and in fact, the Planning Department provides evidence directly to the contrary. The Planning Department’s report prepared in connection with the draft ICO estimates that the percentage of home “rebuids” over the next two years is

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likely to be minimal (less than 1% in most neighborhoods within the Project Area). Thus, the Planning Department's own evidence rebuts the dire forecast that out of scale development will proliferate to such a degree that immediate action in the form of an ICO is necessary.

- The stated goal of the ICO is to address the alleged "degradation of neighborhood character, loss of neighbors' privacy, curtailment of development potential, and negative impacts to aesthetics and general quality of life," but a prohibition on the *size* of home expansions does not address these issues. Thus, the ICO is not rationally related to its stated goal.
- Although coined an "anti-mansionization" ordinance, the ICO will impact many homeowners who are worlds away from owning mansions or being millionaires. Instead, the ICO will impact many low and middle-income families, including those with larger immediate and extended families who – based on religious beliefs, cultural and/or ethnic traditions or economic necessity – have several generations of relatives living together as a large a family unit, and find that they are unable to expand their homes to accommodate their needs. This direct threat on family life potentially impacts constitutionally protected rights.

Each of these issues is discussed in detail below.

**A. There is No Urgency to Warrant Enactment of an ICO that Bypasses the Usual Safeguards of Public Participation.**

An ICO is an extraordinary tool. It allows cities to bypass the usual procedures reserved for the enactment of zoning ordinances – procedures that allow for meaningful public participation – and to instead enact a zoning ordinance as an "urgency measure." Because the regularly required safeguards for enactment of zoning ordinances are not followed, ICOs are permitted only when the legislature finds that "there is a current and immediate threat to the public health, safety, or welfare."<sup>1</sup> While the ICO *claims* that a current and immediate threat exists, the City does not – and cannot – present any evidence to substantiate this claim.

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<sup>1</sup> California Government Code Section 65858.

According to the ICO and accompanying documentation released by the Planning Department<sup>2</sup> (“CEQA Narrative”), the past six years has seen a “surge of construction activity [that] has generated a proliferation of out-of-scale developments that threaten the cohesion and character” of the single-family home neighborhoods comprising the Project Area. *CEQA Narrative, p. 4*. Accompanying this claim is a chart indicating that the Project Area neighborhoods have, over the past six years, pulled more construction and demolition permits than other single-family neighborhoods in the City.

While that may be true, it is not evidence of anything other than the simple fact that more permits are pulled within the Project Areas than in other areas of the City. It is not, however, evidence that: (i) more homes were in fact constructed or demolished in the Project Area than in other areas of the City; or (ii) if they were, that those homes or home additions were “out of scale developments” or were out of character with the existing neighborhoods. Quite simply, the number of permits pulled does not equate to “out of scale development” that “threatens cohesion and character” of neighborhoods. And, even if those permits *were* used to build additions onto existing homes, the conclusion that these additions somehow ruined the neighborhoods’ character represents a leap in logic that is not grounded in facts.

Similarly, the ICO claims there has been an acceleration of the “recent trend of property owners tearing down original houses and replacing them with hulking, box-like structures or significantly remodeling existing structures with bulky two-story additions that are out of scale with neighboring properties.” This bald assertion, unsupported by any evidence whatsoever, raises a host of questions.

- How many original homes have recently been torn down?
- How many of them have been replaced with “hulking box-like structures”?
- For that matter, what exactly is a “hulking box-like structure”?
- How many existing structures have been “significantly remodeled”?
- How many of them have been remodeled with “bulky two-story additions”?

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<sup>2</sup> See Revised CEQA Clearance for Neighborhood Conservation Interim Control Ordinance; CF 14-0656, dated February 20, 2015 and accompanying Notice of Exemption and California Environmental Quality Act (CEQA) Narrative: CF 14-0656. We also question the propriety of the use of a Class 2 Categorical Exemption for the ICO, and expressly reserve the right to present additional information on this topic as appropriate.

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- What makes a two-story addition “bulky”? Are all two-story additions de facto “bulky”?
- How many of these “hulking” and “bulky” structures are “out of scale with neighboring properties”?
- What if the scale of the entire neighborhood has changed, such that these additions and structures are in keeping with the new scale?

Without any answers to these questions, it is impossible to glean what threat is immediate, or why or how the situation is so dire as to necessitate the abandonment of the procedural safeguards generally required before the enactment of a measure of this nature. While some of the Council Offices discussed these issues with certain Neighborhood Councils and Homeowners Associations, the outreach to date has not been adequate to justify passage of an ICO with such a comprehensive and sweeping impact on individual property rights and values. Additional outreach, polling, community meetings, and other public forums should be conducted to obtain a broad range of opinions from impacted constituents – not simply those who support the ICO or have been involved in its creation. Many impacted homeowners are likely not even aware that the ICO has been proposed, or that their neighborhoods are proposed for inclusion.

Obtaining the input of these and other homeowners is critical. Many Project Area residents may not, for example, find the new homes or home additions “hulking and box-like” at all, but rather beautiful and tasteful. They may believe the additions are a vast improvement to the undersized or outdated original structures that perhaps lacked charm and character and have long since outlived their utility. They may be grateful that their neighbors have invested in the community and increased the overall property values in their areas. They may welcome the prospect that they too will soon be able to add a second story onto their home, thereby providing a home more suitable for their growing family. They may appreciate the ability to add more rooms for a home office since they no longer commute to work every day, or space for home schooling their children, or space to allow their elderly parents to live with them, and may be glad they don’t have to move and leave the neighborhood they have come to love to accommodate these needs.

These homeowners – particularly all those in lower CD 5, Kentwood (CD 11), and Mar Vista/East Venice (CD 11) – may be stunned to learn that the bonuses previously available under the Baseline Mansionization Ordinance are no longer available to

them, or that the square footage of their garage (a mandatory zoning requirement) now counts against their overall allowable square footage. For homeowners in these areas, the practical impact of this proposed revision would be to reduce the potential size of their homes by about 30% – a whopping reduction that could very well mean the ICO would eliminate their ability to build the kind of home desired by many modern families.

In financial terms, it also means that these homeowners' property values have suddenly shrunk by about 30%, which may have effectively eliminated all equity the homeowners have achieved (or finally regained after a long and painful recession). When these property values are multiplied across the Project Area, the result is the loss of untold millions of dollars in property values – something this City simply cannot afford and to which we doubt most homeowners would agree if they understood the ramifications.

Given this, the homeowners within the Project Area may have many opinions about their neighborhoods that are directly contrary to the conclusory assumptions contained in the ICO. These voices should be heard before the ICO is enacted. Without any evidence of "urgency" or "immediate threat to the public welfare," an ICO is simply not justified.

**B. The CEQA Narrative Issued by the Planning Department Contradicts any Finding of Urgency.**

After declaring the threat of home remodels to be immediate and the need for action urgent, the CEQA Narrative estimates the impact of the ICO on anticipated rebuilds over the next two years. To illustrate the impact, the Planning Department prepared a chart, included as Table 6 in the CEQA Narrative, which analyzes the number of permits issued over the past six years in each of the affected neighborhoods. *CEQA Narrative, p. 11.* Because the past six years includes the recession, the Planning Department used only the data from the past two years to anticipate how many rebuilds could be expected in each of the neighborhoods over the next two years (the proposed term of the ICO), and then translated that number into a percentage of the total number of single-family zoned lots in each neighborhood.

The conclusion of all this data is that, with the exception of South Hollywood, "the percentage of new home construction ranges from 0% to 2.76%, with the majority failing below 1.0%. *These low percentages demonstrate the minimal impact on a*

*neighborhood scale that could result from new home construction during the ICO.”* In other words, the Planning Department’s analysis demonstrates that very few homes are expected to be remodeled/rebuilt over the next two years. If so, then it is difficult to understand why or how there is such an urgent need for this ICO. The data directly contradicts the claims made, only a few pages earlier, of a “surge in construction activity” and a “proliferation” of development. Larchmont Heights and the Miracle Mile, for example, report only 2 construction permits issued over a six year period. Less than 1% can hardly be deemed a rampant threat.

Thus, the Planning Department’s own evidence makes clear that, in raw numbers, there is little need for this ICO; the impact would be minimal. For those properties that wish to remodel, however, the individual impact could be tremendous. Moreover, there is no evidence to suggest that any of the less than 1% of anticipated remodels are likely to be “hulking box-like structures” or “bulky two story additions.” The proffered findings are simply unsupported by the evidence.

**C. The ICO’s Focus on Size Does not Address the Problems the ICO Seeks to Combat.**

Several portions of the ICO and the accompanying CEQA Narrative reference the problems the ICO is intended to address. Loss of community character, for example, is mentioned, as is loss of privacy and negative impacts to aesthetics, among others. While these may be laudable goals, restricting the size of home additions, particularly in the manner proposed in the ICO, does not accomplish these objectives.<sup>3</sup> In fact, quite the opposite may be true.

As discussed above, the ICO is based on the erroneous premise that home additions over a certain size are inherently negative. For that reason, five of the Project Areas allow reconstruction that is no more than 120% of the original square footage. But this is an incorrect presumption. The teardown of an “ugly duckling,” neglected 1000 square foot home – perhaps the smallest home in the neighborhood and the one considered an eyesore, bringing down the surrounding property values – with the rebuild of a larger, beautifully designed home, would likely be a welcome addition to the area. This new home could well enhance community character, improve both

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<sup>3</sup> Strangely, the ICO claims that the “proliferation of construction” has resulted in the “curtailment of development potential.” How that could possibly be the case – that *more* construction has *curtailed* development – is not explained and seems to be counter-intuitive.

aesthetics and the “general quality of life,” yet if the new home were larger than 1200 square feet, this investment into the neighborhood would be prohibited.

Moreover, with regard to aesthetics, the ICO does nothing to protect homes that may be demolished and replaced with homes within the allowable size but of a wholly different and incompatible design style. The ultra-modern box within a neighborhood of craftsman style homes is still permitted, so long as it is built within the size parameters established by the ICO.

The ICO also claims it wishes to prevent “loss of privacy.” Apparently, the implication is that remodels over a certain size will impinge on the privacy of adjacent neighbors. But this assumption is flawed for several reasons. First, it is impossible to understand how a basement addition – no longer exempt in several of the Project Areas – infringes on neighbors’ privacy. Moreover, a detached accessory building – also no longer exempt in several areas – constructed at the back of the house, perhaps facing an alley – would hardly infringe on a neighbor’s privacy. Even a two story addition does not necessarily interfere with privacy, particularly if most homes in the area are already two stories, and if adequate setbacks are maintained. Moreover, design guidelines – in the form of stepback requirements – would be a more effective means of addressing privacy issues than size, as even a small permitted addition could negatively impact privacy if not built responsibly. To the extent protection of privacy is a goal, the ICO is not an effective means of protecting that alleged interest.

In legal terms, this all means that the ICO is not rationally related to its stated goal because it does not advance the interests it seeks to protect: it does not protect community character, or ensure against loss of privacy, or reduce negative aesthetic impacts. To the extent communities are concerned about character and aesthetics, a well-drafted set of design guidelines – including height restrictions, minimum set back and stepback requirements and architectural standards – would be a better, more effective, and less obtrusive means of advancing the City’s interests. The City does not need to put a halt to the admittedly “minimal” number of home improvements that may occur over the next two years while it develops guidelines of this nature.

**D. The ICO Purports to Protect Against “Mansionization,” but in Practice Would Prohibit Ordinary Homeowners from Being Able to Accommodate their Families.**

“Anti-mansionization” has a compelling ring. The term conjures, as the ICO states, negative images of “hulking box-like structures” erected by millionaires imposing showy homages of their wealth on unsuspecting communities. But the name is a misnomer, and the ICO prohibits home improvements that would fall far short of the creation of “mansions.” In the example above, a 1000 square foot home would be precluded from constructing an additional 300 square feet in certain of the Project Areas; this modest sized home could hardly qualify as a “mansion.” This is particularly true if the addition is located in the basement where it would not be visible.

More importantly, however, while some Councilmembers may have less concern about alleged millionaires building their garish and hulking mansions, the City should care about the interests of many hard-working families who have invested their life savings into their homes and wish to stay in them even if their circumstances change and they need more space. There is the young couple who bought a modest home and now, several children later, find themselves in need of a couple of additional bedrooms. Or the family whose parents or grown children need to move in with them, perhaps for health or financial or religious reasons, and needs some extra room. Or the single mother who can’t commute to work every day, but picks up extra income by working from home, and would like to add a home office. Or the family who believes in home schooling their children and having “movie-night” at home with the neighborhood kids because they don’t believe hanging out at the mall is good for them, and wants to expand their space to accommodate these needs.

All these people may not be able to afford to move to a larger home, or they may wish to stay in their existing neighborhood because they don’t want the disruption in their children’s schooling or because they can walk to their place of worship or because their friends and other family members are close by. The ICO would suggest these people are no longer allowed to construct a home suitable for their needs. In essence, the ICO would render it impossible for a couple to move their aging parents into their home, even if they are willing to put them in the basement. The law is fiercely protective of governments’ efforts to infringe on these most basic rights of family and association, and requires that any such ordinance be the least intrusive means possible of meeting a compelling public need. See *Moore v. East Cleveland* (1977) 431 U.S. 494,



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499; *City of Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980). The ICO utterly fails in this regard.

**E. Conclusion.**

The fact of life is, nothing stays the same forever. Gone are the days when homes were occupied by families comprised of a dad who went off to work, while mom stayed home with 2.5 kids, who innocently played ball in the streets after school. Sadly for some, happily for others, those days are gone. The economy, coupled with the changing face of our society, has altered the nature of "home." Homes must now accommodate larger and extended families, or home offices, or home gyms, or playrooms or larger kitchens because more and more activities take place in the home. While the City's goal of protecting neighborhoods and communities is commendable, it cannot do so by simply freezing time. Neighborhoods and communities must adapt, but they must do so by creating restrictions that ensure responsible development, such as guidelines on design, on height, on setbacks, and the like. The City should not adopt an ICO that simply eliminates property rights and reduces property values for Project Area homeowners.

We respectfully request that this Committee reject the ICO as proposed.

Very truly yours,



Ellen Berkowitz, of  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation

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cc: Honorable City of Los Angeles Councilmembers  
Ken Bernstein, Principal City Planner  
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