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Fwd: Council File 16-0126/Hearing Date April 4, 2017, Agenda Item No. 4/Historic-Cultural Heritage Ordinance/Amendments

Sharon Dickinson

Apr 4, 2017 7:49 AM

Posted in group: **Clerk-PLUM-Committee**From: **Ibaraki, Kathlyn S.** <Ki2@jmbm.com>

Date: Mon, Apr 3, 2017 at 5:05 PM

Subject: Council File 16-0126/Hearing Date April 4, 2017, Agenda Item No. 4/Historic-Cultural Heritage Ordinance/Amendments

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Chair Jose Huizar and Honorable Members of the PLUM Committee:

Please find attached Daniel Freedman's April 3, 2017 letter regarding the subject matter. Thank you.

Kathlyn Ibaraki | Secretary to attorneys Benjamin M. Reznik and Daniel F. Freedman

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April 3, 2017

VIA E-MAIL (sharon.dickinson@lacity.org; zena.cheng@lacity.org)

Honorable Jose Huizar, Chair
Honorable Members of the Planning Land
Use Management Committee of the
Los Angeles City Council
200 North Spring Street, Room 395
Los Angeles, CA 90012
Attn: Sharon Dickinson and Zena Cheng, Legislative Assistants

Re: Historic-Cultural Heritage Ordinance / Amendments
Council File: 16-0126
Hearing Date: April 4, 2017; Agenda Item No. 4;

Dear Chair Huizar and Honorable Members of PLUM Committee:

We submit these comments in response to the various revisions proposed for the City's Cultural Heritage Ordinance ("Ordinance") as contained in Section 22.171 of the Los Angeles Administrative Code. Based on our office's substantial experience handling historic designation matters on behalf of property owners, we submit the following recommended revisions and additions to the Ordinance. While we are generally supportive of the City's efforts to improve the Ordinance, we believe our proposed revisions will create a more balanced Ordinance that will provide applicant's, owners, and the City, greater certainty throughout the historic designation process. Accordingly, we submit the following recommended revisions:

- **Maintain and Strengthen Criteria Standards:** The proposed ordinance unreasonably loosens the criteria for Historic-Cultural Monument ("Monument") designation. Given the City's substantially expanded historic preservation efforts ongoing in the City, we recommend that the City *increase* the standards for Monument status so that only *exceptional* buildings and structures are considered. Our recommended revisions, which are consistent with the standards for designating National historic Landmarks, are provided below.
- **Require Property Owner Notice at/or Prior to Submittal:** As currently proposed, the Ordinance will impose a stay on a property owner's demolition or construction before he/she is given notice. This is unreasonable and creates serious due process concern. We therefore recommend the Ordinance require that a Monument *applicant* provide written notice to the owner 10 business days before an application is filed,

and that no application may be deemed complete until proof of such notice is received by the City. This will reduce the risk that stays on construction will be dropped on owners without notice.

- **Provide Deadlines for Processing of Applications:** As currently proposed, there is no timeline or deadline whereby the Director must consider a filed Monument application after it is received by the City. Given that a stay on construction is imposed immediately once an application is deemed complete, it is unfair to property owners that a stay could be initiated at any time based on the Director's convenience. We therefore recommend that the Ordinance require an application be reviewed by the Director within 30 days of filing, and that any application not reviewed within that period shall be deemed denied.
- **Effect of a Deemed Denial:** The proposed Ordinance does not specify the effect of a denial and/or deemed denial of a Monument application. This creates a potential risk of serial nominations and a potential abuse of the Monument designation process. We therefore recommend that the Ordinance specify that a Monument nomination may not be considered within 1 year of a previous nomination's denial for the same building/structure.

Below are further comments and analysis on these recommendations.

SECTION 22.171.7, MONUMENT DESIGNATION CRITERIA

Revisions increase vagueness or designation criteria.

This section sets forth the criteria used for determining whether or not a building or structure shall be deemed a Monument that embodies the "heritage, history, and culture of the City." Given the significance of this designation, in consideration of the designation's impact on a property owner's rights, we are concerned about the loosening of standards proposed as part of this revised Ordinance; specifically, Criteria 3, which is being amended in a way that will allow for nearly any old building to be designated. The criteria as it currently exists in the Ordinance provides that a Monument must:

Existing Criterion 3: Embod[y] the distinguishing characteristics of an architectural type specific, inherently valuable for a study of a period, style or method of construction; or a notable work of a master builder, designer, or architect whose individual genius influenced his or her age.

The revised criteria has been edited in this proposed amendment as follows:

Proposed Criterion 3: Embodies the distinguishing distinctive characteristics of an architectural type specimen, inherently valuable for a study of a period, a style, type, period, or method of



construction; or a notable work of a master builder, designer, or architect whose individual genius influenced his or her age.

This criterion as it currently exists in the Ordinance is already so broad as to essentially render nearly any building eligible for designation; the proposed revisions only worsens this problem by eliminating the standard that the Monument be an "architectural type specimen," "inherently valuable for a study of a period," and that it must be "distinguished." This newly proposed criterion is significantly broader than the existing criterion, and requires nothing more than the identifying a building with a building type in order to establish eligibility. Given the substantial progress the City has made in instituting a comprehensive historic preservation strategy with SurveyLA and historic overlay districts, as a matter of policy the Monument standards should be *heightened* not loosened. We would therefore recommend that the City Council implement a higher and more distinguishable standard for designating a building under Criteria 3 consistent with the standards utilized for designating National Historic Landmarks. We therefore recommend the following revision to Criteria 3:

Recommended Criterion 3: Embodies the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction; or a notable and rare work of a master builder, designer, or architect whose individual genius influenced his or her age.

SECTION 22.171.10(D).2, PROPERTY OWNER NOTIFICATION

Applicant should be required to provide notice to a property owner before an application may be deemed complete.

As currently drafted, Section 22.171.12 of the Ordinance immediately establishes a temporary stay of demolition, substantial alteration, or removal as soon as the Director deems an application complete. Section 22.171.10(d).2, however, provides that an owner is not given notice of the stay until *after* an application is deemed complete. Our office has several concerns and comments relating to this procedure.

Firstly, there is no standard set forth in the Ordinance for establishing when and/or how the Director must deem an application complete. Accordingly, as currently drafted, the Director has unfettered discretion to either quickly process an application, or refuse to process an application. Accordingly, our office recommends that the Ordinance include a deadline for processing filed applications, and clear direction that any application not processed within that set time period is considered deemed denied. Such a policy would be consistent with nearly all other application procedures required by the Department of City Planning, and would be consistent with the legal and policy framework of the Permit Streamlining Act.

Second, the process proposed in this amended Ordinance for property owner notification creates serious due process concerns in that it imposes a stay on demolition and



Honorable Jose Huizar, Chair
April 3, 2017
Page 4

construction without notice to the property owner. As proposed, it is conceivable that the Director could deem an application complete on a Monday, demolition work could begin on a Tuesday, and the owner would only receive notice of the stay on a Wednesday. This is unfair to property owners, and only establishes a system whereby the City can ambush owners with stays whenever it may be convenient to the City. Accordingly, the stay cannot be implemented before notice is given to the property owner, and the Ordinance should be amended accordingly.

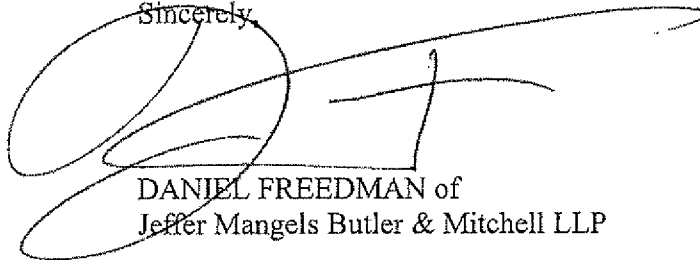
Third, given these risks, we recommend the City place the burden of notifying a property owner of a Monument application on the applicant. Here, we recommend that the City require that the applicant provide advance written notice to a property owner that an application is being submitted to the City, and that the City require proof of this notice as part of a complete application. By requiring the applicant to provide notice of the nomination, this will eliminate the risk of the City ambushing a property owner with a stay without any notice, and will provide more certainty to all parties involved in the process.

EFFECT OF A DENIAL, AND DEEMED DENIAL

The ordinance should specify that a nomination may not be re-heard within a year of a denial.

Another persistent problem concerning this Ordinance is the effect of a denial and/or a deemed denial on the City's ability to consider serial applications to the same site. While, generally speaking, we understand that it is the City's policy not to rehear a nomination after it has been denied, this policy is not codified in the Ordinance or the Municipal Code. Accordingly, we request that a section be included in the Ordinance to specify that any proposed nomination that was been denied and/or deemed denied for any reason, may not be reheard or reconsidered within at minimum one (1) year of that denial. This standard would be consistent with other City policies, and would reduce the potential for serial abuse of the Ordinance by applicants as a tool for obstructing an owner's reasonable use of their property. Thank you for your consideration.

Sincerely,



DANIEL FREEDMAN of
Jeffer Mangels Butler & Mitchell LLP

CC: Vince Bertoni, Director of Planning, City of Los Angeles
Ken Bernstein, Manager and Principal City Planner, City of Los Angeles
Lambert Giessinger, Historic Preservation Architect, City of Los Angeles
Lucy Atwood, Esq., Deputy City Attorney, Office of City Attorney Mike Feuer

